LAND-LORDS LAW:

A

Treatise very fit for the Perusal of all Gentlemen and others.

BEING

A *Collection* of several *Cases* in the Law concerning *Leases*, *Distresses*, *Replevins*, *Rescous*, *Waste*, and several other matters which often happen between *Land-Lord* and *Tenant*, as appears in the Contents of the several Chapters.

By *G. Meriton*, Gent. *olim Clericum Cliffordiensem.*

Hor.

—— si quid novisti rectius istis,
Candidus imperti; si non, his utere mecum.

LONDON,
Printed for *Henry Twyford*, *Thomas Dring*, and *John Place*. 1665.

To All Gentlemen Land-Lords, and other knowing Perſons of this Kingdom.

Worthy Sirs,

HAving formerly had ſeveral Doubts and Quære's in my minde, upon ſome particular Caſes which oftentimes come in queſtion betwixt Land-Lords and their Tenants, and being deſirous to ſatisfie my ſelf in thoſe points; I thereupon made it my Study and Recreation at ſome ſpare hours to ſearch and collect ſome choice Caſes, (out of the Reports *and other Works of ſeveral Learned and Grave Judges, and other Sages of the Law) touching the* Covenants, Conditions, Grants, Proviſoes, Reſervations, Exceptions, Surrenders, Aſſignments, *and many other things concerning* Leaſes; *as alſo*

touching Diſtreſſes, Reſcous, Avowries, Replevins, Waſte, *and other matters often coming in debate between Land-Lords and their Tenants, as appears in the ſeveral Chapters hereafter in this ſmall Treatiſe. Which little Manual at the firſt undertaking was intended onely for private uſe, and a* Vade mecum *for my own Pocket; but having ſince communicated it to ſome ſpecial Friends and knowing Gentlemen, they have been very importunate with me for the publiſhing of it; at whoſe requeſts (they being my very intimate Friends and Acquaintance) I have now adventured this ſmall imperfect Treatiſe to the publick view. If it finde Acceptance it will be much Satisfaction to him who is,*

Gentlemen,

Your humble Servant,

GEORGE MERITON.

An Alphabetical Table of the Names of the Cases vouched in this Book.

A

AMphurſt and Palmer's Caſe, Paſc. 19 Jac. Rot. 2048. Hobart's Rep. f. 331. *Page* 66

Amnor and Loddington's Caſe, M. 26 & 27 Eliz. vouched in Cook's 1 part Inſt. f. 351. a. 79

B

BUtt's Caſe, 42 Eliz. in C. B. Cook's 7. lib. f. 23. 2

Biſhop of Bath and Wells's Caſe, 3 Jac. in C. B. Co. 6. lib. fo. 34, & 35. 2, & 74

Barker and Fleetwel's Caſe, 29 Eliz. in B. R. Godbolt's Rep. f. 69. 13

Beverley's Caſe, 24 Car. Clayton's Rep. p. 111. pl. 189. 44

Browning's Caſe, Plo. Com. f. 136. 52

Boroughs and Taylor's Caſe, Paſc. 38 El. in B. R. Goldſborough's Rep. f. 124. pl. 9. 49, & 62

Bredon's Caſe, M. 39 & 40 Eliz. Co. 1. lib. f. 76. 57

Boraſton's Caſe, 29 Eliz. Co. 3. lib. f. 19. pag. 67
Bettiſworth's Caſe, 33 Eliz. in C. B. Co. 2. lib. f. 31. 69
Barwick's Caſe, in the Exchequer, Co. 5. lib. f. 93. 71, & 74
Brudenell's Caſe, 34 Eliz. in B. R. Co. 5. l. f. 77, & 83
Lewis Bowles's Caſe, 13 Jac. Co. 11. lib. f. 79. 92
Berdſley and Pilkinton's Caſe, Goldsborough's Rep. f. 100. 98
Bagſhaw and Goward's Caſe, Hil. 3 Jac. in B. R. Rot. 1070. Crook's Rep. 2 part, f. 147. 110
Bevil's Caſe, Mich. 27 and 28 Eliz. Co. 4. lib. f. 11. 111
Beaumont's Caſe, 10 Jac. Co. 9. lib. f. 138. 147
Bingham's Caſe, Co. 2. lib. fo. 92. 151

C

Compton and Allen's Caſe, Trin. 1649. Rot. 348. in B. R. Styles Rep. f. 162. 14
Cole and Taunton's Caſe, Hil. 36 Eliz. Rot. 376. Goldsborough's Rep. f. 184. pl. 122. 26
Colthirſt's Caſe, Plo. Com. fo. 28. b. 30
Clun's Caſe, 11 Jac. in B. R. Co. 10. lib. fo. 227. 45, 46, and 48
Cibill and Hill's Caſe, M. 30 Eliz. in C. B. Leonard's Rep. f. 110. 60
Cranley and Kingſwell's Caſe, Paſc. 15 Jac. Rot. 710. Hobart's Rep. fo. 207. 63

Cecil's Caſe, Dyer's Rep. 253. *pag.* 67
Clayton's Caſe, 37 Eliz. in C. B. Co. 5. lib. fo. 1. 71
Clifton's Caſe, 35 Eliz. Co. 5. lib. fo. 73. 149

D

Dean and Chapter of Windſor's Caſe, M. 44 Eliz. in B. R. Co. 5. lib. f. 24. 15
Dumport's Caſe, Hil. 45 Eliz. in B. R. Co. 4. lib. f. 119. 20, 35
Lord Darcy and Askwith's Caſe, Hil. 15 Jac. Hobart's Rep. f. 234. 138
Dean and Chapter of Worceſter's Caſe, 3 Jac. Co. 6. l. f. 37. 151

E

Ellis and Chowne's Caſe, Hil. 44 Eliz. in C. B. Rot. 1459. vouched in Co. 1 part Inſt. f. 45. 57

F

Farrington's Caſe, Dyer's Rep. f. 67. 26, 82
Fulmerſton's Caſe, Plo. Co. fo. 107. b. 43
Foord's Caſe, 37 Eliz. in C. B. Co. 5. l. f. 81. 56
Sr William Foſter's Caſe, M. 6 Jac. Co. 8. l. f. 64. 123

G

GReen's Caſe, Anno 1650. Clayton's Rep. pa. 146. pl. 265. *pag.* 44
Gough's Caſe, 4 Mar. Dyer's Rep. 141. 53
Goddard's Caſe, M. 34 Eliz. in C. B. Owen's Rep. f. 10. 60
Sr. Rich. Grobham and Thornborough's Caſe, Hil. 10 Jac. Rot. 1793. Hobart's Rep. f. 82. 64
Green's Caſe, 18 Eliz. Leonard's Rep. f. 262. *ibid.*
Goddard's Caſe, 26 Eliz. Co. 2. l. fo. 5. 72
Gomerſal and Wayt's Caſe, M. 8 Jac. in B. R. Crook's Rep. 2 part, fo. 255. 97

H

HArding's Caſe, M. 30 Eliz. in B. R. Godbolt's Rep. f. 139. 27
Dame Hale's Caſe, Plo. Com. fo. 260. b. 33, 81
Hill and Grange's Caſe, Plo. Com. fo. 171. 35, 63
Humble and Oliver's Caſe, M. 36 Eliz. in B. R. Popham's Rep. f. 55. 42
Hare and Savil's Caſe, M. 7 Jac. in C. B. Brownloe's Rep. 2 part, fo. 273. 45
Hopkins and Morton's Caſe, vouched in Pennant's Caſe, Co. 3. lib. fo. 53
Howe and Broome's Caſe, Hil. 43 Eliz. Goldsborough's Rep. f. 125. pl. 15. 60
Howel and Samback's Caſe, M. 13 Jac. Rot.

Rot. 2009. Hobart's Rep. f. 133. *pag.*
Hanſon and Norcliff's Caſe, Hil. 18 Jac. Rot. 2861. Hobart's Rep. f. 331. 66
Harbin and Barton's Caſe, Goldsborough's Rep. f. 187. pl. 130. 81,83.
Henſtead's Caſe, M. 36 & 37 Eliz. in C.B. Co. 5. l. f. 10. 84
Hunt and Downam's Caſe, Paſc. 16. Jac. in B.R. Crook's Rep. 2 part, fo. 478. 85
Harlackenden's Caſe, 31 Eliz. in B.R. Co.4. lib. fo. 31. 92, 127, 128.

K

Kidwell's Caſe, Plo. Com. 70. 62
Sr Henry Knivet and Pool's Caſe, Goldsborough's Rep. f. 143. pl. 60. 88

L

Leeds and Crompton's Caſe, M. 28 Eliz. in C. B. vouced in Hughes's grand Abr. of the Law, 1 part, p. 428. c. 5. 20
Lutterell's Caſe, 43 Eliz. in B. R. Co. 4. lib. fo. 86. 35,91
London's Caſe, vouched in Co.1 part Inſt. f. 47. b. 44.

M

Sir Anthony Mayn's Caſe, 38 Eliz. in C. B. Co. 5. l. f. 20. 12,14
Marrow and Turpin's Caſe, Paſc. 41 Eliz. in C. B. Rot. 2485. 41

March and Brace's Case, M. 11 Jac. in B. R. Bulstrode's Rep. 2 part, 151. *ibid.*
Lord Mountjoy's Case, M. 31 & 32 Eliz. in B. R. Co. 5. lib. f. 3. 46
Manley & Jennings's Case, Pasc. 10 Jac. in C. B. Brownloe's Rep. 2 part, f. 176. 47
March and Curtie's Case, 40 Eliz. in C. B. Rot. 1302. vouched in Pennant's Case, Co. 3. l. f. 65. 64, 65
Mallery's Case, 43 El. Co. 5. l. f. 111. 77
Manning's Case, 7 Jac. Co. 8. lib. fo. 94. 79
More and Conham's Case, M. 7 Jac. in C. B. Owen's Rep. f. 123. 110

N

Nichols Case, Plo. Com. fo. 487. 21

O

Overton and Siddal's Case, 37 Eliz. in B. R. vouched in Co. 3. l in Walker's Case there, f. 41
Oland's Case, 44 Eliz. in B. R. Co. 5. l. f. 116. 90
Osborn and Rider's Case, Hil. 13 Jac. in B. R. Crook's Rep. 2 part, 135. 71
Ognell's Case, 29 Eliz. Co. 4. lib. fo. 49. 104

P

Pennant's Case, 38 Eliz. Co. 3. lib. fo. 64. 1[illegible], 4[illegible], 52, [illegible], [illegible]4.

Page and Parr's Case, in B. R. Styles Rep. fo. 243. *pag.* 19
Paradine and Joxe's Case, M. 23 Car. in B. R. Styles Rep. f. 47 & 48. *ibid.*
Pepall and Hammington's Case, 17 Eliz. in B. R. Popham's Rep. 117, & 118. 37
Partridge and Naylor's Case, Goldsborough's Rep. f. 145. pl. 62. 98
Pager's Case, 35 Eliz. in C. B. Co. 5. l. f. 76. 151

R

Rector of Cheddington's Case, 40 El. Co. 1. l. 155, & 156. 2, 68, 73
Revel and Hart's Case, Goldsborough's Rep. f. 138. pl. 44. 52
Remmington and Kingerbie's Case, 18 Car. in B. R. Styles Rep. f. 4. 64

S

Spencer's Case, Pasc. 29 Eliz. in B. R. Co. 5. l. fo. 16, & 17. 13, 35
Sr John Spencer and Sr Jo. Poyne's Case, Tr. 5 Jac. in B. R. Godbolt's Rep. fo. 154. 64
Say and Fuller's Case, Plo. Com. f. 272. b. 74
Savin's Case, 3 Jac. in C. B. Co. 5. lib. f. 123. 77
Sayer and Hardye's Case, Goldsborough's Rep. f. 179. pl. 112. 82
Saunders's Case, 41 Eliz. in C. B. Co. 5. l. fo. 12. 139

Tre-

T

T Report's Caſe, M. 37 Eliz. in B. R. Co. 6. l. f. 15. pag. 57
Thyn and Cholmley's Caſe, Tr. 36 Eliz. Goldsborough's Rep. fo. 186. pl. 129. 64
Tooker's caſe, 43 Eliz. Co. 2. lib. fo. 39. 67
Tintmye and James's caſe, Tr. 15 Car. in B. R. Winche's Rep. fo. 30, & 31. 122

U

U Ngle and Glover's Caſe, 35 Eliz. vouched in Walker's Caſe, Co. 3. lib. fo. 42

W

W Roth and the Counteſs of Suſſex's Caſe, P. 28 Eliz. Leonard's Rep. 1 part, 131. 6
Wotton and Edwin's Caſe, 5 Jac. in B. R. vouched in Co. 1 part Inſt. f. 47. a. 37
Watt and Maidwell's Caſe, 3 Car. Rot. 1302. in B. R. Hutton's Rep. 104. 39
Wade's Caſe, 43 Eliz. in C. B. Co. 5. l. f. 111. 48
Lord Willoughbie's Caſe, Dyer's Rep. fo. 80. 68

Walker's Caſe, 29 Eliz. in B. R. Co. 3. l. f. 22. *pag.* 41,147
Walgrave and Somerſet's Caſe, M. 29, 30 Eliz. Goldsborough's Rep. fo. 72. pl. 17. 141

The

The Contents of the Chapters.

CHAP. I.

Of Leaſes: Who may make them, and for what Term; and Who are called Tenants for Life, Tenants for term of Years, at Will & Sufferance. Page 1

CHAP. II.

Of the Covenants, Conditions, Grants, Proviſo's, Reſervations, Exceptions, Surrenders, Aſſignments, &c. of Leaſes. 12

CHAP. III.

Of Payments, Rents, Acceptance, Confirmations, Extinguiſhments, Demands, Reentries, Limitations, &c. of Leaſes. 45

CHAP.

CHAP. IV.

Of the Dates, Commencements, Continuance, and Determinations of Leaſes. 71

CHAP. V.

Of Corn ſown where the Tenant is outed, or the Term determines before it be ripe, who ſhall have it: and alſo of Eſtovers, and Trees blown down, &c. 87

CHAP. VI.

Of Diſtreſſes. Of what things a Diſtreſs may be taken, and how it muſt be uſed, &c. 94

CHAP. VII.

Who may take a Diſtreſs, and for what cauſe, and when, and where. 102

CHAP. VIII.

Of Reſcous, where it ſhall be lawful. 110

CHAP.

The Contents.

CHAP. IX.

Of Replevins, when and where to be ſued out. 114

CHAP. X.

Of Avowries, a word or two briefly concerning the ſame. 121

CHAP. XI.

Of Waſte: What ſhall be Waſte in Houſes, Gardens, Woods, Paſtures, &c. and what not. 126

CHAP. XII.

Who are puniſhable in Waſte, and for what Waſte, &c. 140

CHAP. XIII.

An Abridgment of the Statute of the 43 Elizab. *and the* 15 *of* Car. 2. *about the unlawful cutting, ſtealing or ſpoiling of Wood, &c. neceſſary for all Gentlemen to know.* 164

CHAP. IX.
to be read etc. 121

Land-Lords Law.

CHAP. I.

Of Leaſes: Who may make them, and for what Term; and Who are called Tenants for Life, Tenants for term of Years, at Will and Sufferance.

LEASE is derived from *Leapum* or *Leaſum*, for that the Leſſee cometh in by Lawful means; and *Dimittere* is in *French Laiſſer*, to depart with or forgoe. Brac. lib. 4. fo. 220. Fleta lib. 3. cha. 12. Coo. on Lit. f. 43. b.

In every Leaſe there muſt be Leſſor, and Leſſee: he which lets the Land is called the Leſſor; and he which farms it is called the Leſſee. Terms of the Law, verb. *Leſſor* and *Leſſee*.

A Leaſe for Years of Lands

and Tenements, is good as well without Deed as with Deed; but of a Common or Rent, &c. it is not good without Deed.

42 Eliz. in C. B. Butts Case. Co. 7. par. f. 23.

If a Lease for Years be made reserving Rent, it must be of Lands and Tenements, whereunto the Lessor may have resort to distrain; and therefore a Rent cannot be reserved by a common person out of any Incorporeal Inheritance, as Advowsons, Commons, Offices, Corrody, Mulcture of a Mill, Tithes, Fairs, Markets, Liberties, Franchises, &c. But if the Lease be made by Deed in writing of them, one may have an Action of Debt by way of Contract, but distrain one cannot: but if any Rent be reserved in such Cases upon a Lease for Life, it is utterly void.

30 Ass. p. 5. 12 Ass. 20. 20 E. 4. 10. Co. 1 par. Inst. f. 47. a.

3 Jac. in C. B. Bp of Bath's Case. Co. 6. par. f. 34. 35

40 Eliz. Rector of Chedington's Case. Co. 1 par. f. 155, 156. Bract. l. 2. c. 9. Co. 1 par. Inst. f. 45. b.

Every Lease for years must be for a time certain, and ought to express the Term, and when it

it ſhould begin, and when it ſhould end. And yet there may be a certainty in an uncertainty ſometimes; for the Rule is, *Id certum eſt, quod certum reddi poteſt:* therefore look in the 4 Chapter, and you will finde ſome pretty Caſes there about this Rule.

If a man have a Leaſe of Lands for 500 years, it is but a Chattel, and falls to his Executors or Adminiſtrators after his death, if he do not otherwiſe diſpoſe of it in his life-time. 32 lib. Aſſ. 6.

Every one ſeiſed of an abſolute pure Eſtate in Fee-ſimple, may make a Leaſe of his Lands for as long a time as he pleaſeth; and ſo might Biſhops, &c. before they were reſtrained by Statute. See 32 *H.* 8. *c.* 28. 13 *El. cap.* 10. 18 *Eliz. c.* 6. 1 *Jac. c.* 3. Cowell Inſt. p. 189. Coo. 1 par. of Inſt. f. 44. a. b. Noye's Maximes, p. 69.

Tenant in Tail, being of full age, by Indenture in writing may Bro. Leaſe 47. 32 H. 8. c. 28. Vide Herne's Law of Convei. p. 66, 67, & 68.

may make a Leaſe of ſuch Lands and Inheritances as have been formerly letten to Farm for the ſpace of 20 years next before the Leaſe made; or if it be but letten 11 years at one or ſeveral times within thoſe 20, it is ſufficient, reſerving the old Rent or more; without impeachment of Waſte muſt not be in it, and it muſt commence from the day of the making or from the making: and if there be an old Leaſe in being, it muſt be either ſurrendered, expired or ended within one year after the making of the new one, or elſe it is not good; except in the Caſe of a Biſhop, which you will find afterwards. And if the Leaſe be thus made, it binds the Iſſue of Tenant in Tail, if he die before the Term be out: but if he die without Iſſue, the Donor may avoid the Leaſe by En-

Entrie; and ſo may he in Remainder; and though he accept the Rent, yet it ſhall not affirm the Leaſe.

The Husband ſeiſed in Fee-ſimple or Fee-Tail in right of his Wife may make ſuch a Leaſe of his Wife's Land, by Indenture in writing, in the name of the Husband and Wife, and ſhe to ſeal thereunto; and the Rent muſt be reſerved to the Husband and his Wife, and to the Heirs of the Wife, according to her Eſtate of Inheritance: and this ſhall binde her and her Heirs after his death.

Co. 1 par. Inſt. f. 44. Cowell's inſt. p. 189 Noye's Maximes, p. 69.

Biſhops, Deans and Chapters, &c. ſeiſed of any Eſtate in Fee in right of their Churches, obſerving the Rules aforeſaid, may make Leaſes: and ſo may Maſters and Fellows of Colleges, and Wardens of Hoſpitals, if their private Sta-

Co. 1 par. Inſt. f. 44, a. Cowel's Inſt. p. 189. Parſons Law, p. 29.

tutes will permit them.

Co. ubi ſuprá. 32 H. 8. cap. 28.

But note well, that Tenant in Tail and the perſons before named, though they do obſerve theſe Rules, yet they cannot let for any longer term then Three Lives, or 21 years, but for what term they will under.

Co. 1 par. Inſt. f. 45. a.

If Tenant in Tail or any of the aforeſaid perſons obſerve not theſe Rules in their Demiſes, yet notwithſtanding the Leaſes ſhall be good againſt them for their Lives.

Co. 1 par. Inſt. f. 45. a. Paſc. 28 El. in B. R. The Counteſs of Suſſex's Caſe. Leonard's Rep. 1 par. 131. Parſons Law p. 27, 28. Vide Hern's Law of Conv. p. 69, 70.

And if a Leaſe be made by a Biſhop for 21 years, according to the Rules aforeſaid, which is ſpent within 3 years or more, now if the Biſhop make a new Leaſe to another for 21 years, to commence from the making, which is confirmed by the Dean and Chapter, this is a good Leaſe, and the ſecond Leſſee may enter when the firſt Leaſe

Leaſe is out, and hold for the Remainder of his term of 21 years then to come.

Demiſe, *Grant*, *Betake to Farm-let*, and whatſoever words amount to a Grant, may ſerve to make a Leaſe. Co. 1 par. Inſt. f. 45. b. Bro. Leaſes 60. 37 H. 8.

Generally now every Leſſee for Life, Years, or at Will, although it be of never ſo ſmall a Cottage or houſe, is called a Farmor or Fermor, and the premiſſes he poſſeſſeth are called a Farm or Ferm. Terms de Ley, verb. *Farm.*

But formerly the chief Meſuage in a Village or Town, whereunto belonged great Demeſnes of all ſorts, which were uſed to be let for term of Life, Years, or at Will, was called a Farm or Ferm. ibid.

They are called Farms or Ferms of the *Saxon* word *Feormion*, which ſignifies to feed or yield Victuals; for in ancient time then Reſervations ibid.

were for the moſt part in Victuals, until at the laſt, and that chiefly in the time of K. *H.* 1. by agreement, the Reſervation of Victuals was turned into Money, and ſo hitherto hath continued amongſt moſt men.

Under the name of Lands are comprehended not onely Gardens, Meadows, Paſtures, Rivers, Woods, Moors, Waters, Mariſhes, Furzes and Heath; but alſo Meſuages, Houſes, Tofts, Mills, Caſtles, and ſuch like.

Noye's Maximes, p. 57. Finch, l. 2. cap. 2. p. 109.

If the Leſſor ſeal the Indenture, and not the Leſſee, yet it is as good againſt the Leſſor as if both had ſealed.

Noye's Maximes, p. 57. l. it. 88. 14 Eliz. Finch, l. 2. c. 2. p. 109.

And if at any time there happen any variance between the Indentures, it ſhall be taken as the Deed of the Leſſor is, and the other ſhall be intended onely the miſpriſion of the writer: for the Leſſor's is the principal

cipal Deed, and the other but onely a Counterpane.

Now we have ſpoken briefly ſomething concerning Leaſes, and who may make them, we ſhall next ſpeak ſomething of the ſeveral ſorts of Tenants mentioned in this Treatiſe, and ſo conclude this Chapter.

Tenant for Life is he who hath Lands or Tenements for his own or another mans Life; and this Tenant hath a Free-hold, but none other of leſſer Eſtate hath a Free-hold. Lit. Tenures, lib. 1. c. 6. Noye's Maxims, p. 30.

If a man be Tenant for term of his own Life, he hath an higher Eſtate then he that is Tenant for another mans Life. Co. 1 par. Inſt. fo. 42. a.

Tenant for term of Years is, where a man letteth Lands or Tenements to another for a certain term of Years, as it is agreed between them; and when the Leſſee entereth, he is Lit. Tenures, l. 1. Co. 1 par. inſt. 57. 43. b. 44. a.

then Tenant for term of years and if the Lessor reserve to him a Rent, he may either distrain on the premisses, or have an Action of Debt, if the Rent be arrear.

Co. 1 par. Inst. f. 48. a. There needs no Livery and Seisin to be given upon a Lease for Years, but the Lessee may enter when he will; but a Lessee for Life must have Livery, or else no Free-hold passeth.

Lit. Tenures, l. 1. Finch, l. 2. cap. 2. p. 109. 38 H. 8. Br. Estoppel 8. If a man make a Lease by paroll to another, it behoves that he be seised of the Lands or premisses at the time of the Lease made; for else the Lessee may plead that the Lessor had nothing in the premisses at the time of the Lease made, and then he is barred of his Action: but if it be by Indenture in writing, then the Lessee cannot plead this Plea.

Co. 1 par. Inst. f. 55. a. Fleta, l. 3. c. 15. Tenant at Will is, where Lands or Tenements are let by one

one man to another, to have and hold to him at the Will of the Lessor: now when the Lessee enters, he is Tenant at Will, and the Lessor may put him out when he pleases.

But if a man let Lands to another by Leafe, to hold the same during the Will of the Lessee, in this case the Law intends it to be at the Will of the Lessor also, and he may put him out when he pleases. The same Law is if it be at the Will of the Lessor, it is intended at the Lessee's Will also, for the Lessor cannot force him to stay longer then he pleases. Coo. ib.

Tenant at sufferance is he who comes in by lawful Leafe, and keepeth possession after his Leafe is out, and wrongfully holdeth over. *Finch lib.* 2. *cap.* 3. As Tenant for Life of *I. S.* who holdeth over after the death of the said *I. S.* Co. 1 part Inst. f. 57. b. Brac. lib. 4. f. 318. 21 H. 6. f. 42. Kitchin, f. 238. a. 4 E. 3. 35. 24 E. 3. 24. F. N. B. 201. D. Plow. Com. 138.

The

Coo. ubi ſupra. The Leſſor cannot have an Action of Treſpaſs againſt ſuch Tenant before his Entry into the Premiſſes.

CHAP. II.

Of the Covenants, Conditions, Graunts, Proviſo's, Reſervations, Exceptions, Surrenders, Aſſignments, &c. of Leaſes.

38 Eliz. Sir Anthony Mayn's Caſe. Co. 5 par. f. 20. Noy's Maximes, p. 13. Hughes grand Abr. 1 part. p. 487. c. 16.

IF the Leſſor Covenant to make a new Leaſe upon Surrender of the old Leaſe, and afterwards he makes a Leaſe by Fine for more years to a Stranger, here the Covenant is broken, although the Leſſee did not Surrender, the which by the words ought to be the firſt Act; for that the Leſſor did diſable himſelf either to take the

the Surrender, or make the new Leaſe.

If a man make a Leaſe for Years, and the Leſſee covenanteth and granteth to pay to the Leſſor, his Heirs and Aſſigns, yearly during, &c. 10 pound; here if the Leſſor die, the Executors ſhall have the Rent arrear. Noye's Maxims, p. 17. & 50. Dr. & Stud. lib. 1. ca. 24.

If a man covenant and grant to *R. A.* that he ſhall have ten Acres of Land in *C.* for years, this is a good Leaſe, for *Conceſſit* is of ſuch force as *Dimiſit*. 37 H. 8. Bro. Leaſes 60. Kit. Court-Leet, p. 235. b.

If the Leſſee covenant for him and his Aſſigns, to build a Brick-wall or an Houſe upon the Leſſor's Land, or pay a Collateral Summe of money to the Leſſor, and after the Leſſee aſſigneth over his Term; in this caſe the Aſſign ſhall not be bound by this Covenant, becauſe the things were onely Col- Paſch. 25 Eliz. in B. R. Co. 5 par. f. 16, 17. Spencer's Caſe. M. 29 Eliz. in B. R. Barker and Fleetwell's Caſe. Godbolt's Rep. fo. 69, 70. Vide Hern's Law of Conv. p. 107, 108, & 109.

Collateral, and were not *in esse*, nor parcel of the Demise, at the time of the Lease made.

38 Eli. Co. 5 par. f. 64. Pennant's Case. Cowell's Inst. p. 193. Dyer f. 51.

If there be a Covenant in a Lease, that if the Rent be behinde for such a time, then the Lease to be void; here no acceptance of the Rent after such failure will make the Lease good.

Trin. 1649. Rot. 348. in B. R. Compton and Allen's Case. Styles 162. F. N. B. fo. 145. K. Noye's Max. p. 16. 40 E. 3. 5. Finch, p. 64. 38 Eliz. Sir Anthony Mayn's Case. Co. 5 par. f. 20.

If a man let a House and Lands for years, and the Lessee covenanteth to uphold the Houses, and to leave the Houses and Lands in as good a plight and estate as he found them; in this case, if the Houses be blown down by Tempest or fired by accident, or otherwise destroyed, if the Lessee do not repair and build them again, and leave them as good as he found them, the Lessor may bring an Action of Covenant against him at the end of his term: but if he maketh

Wast

Waſt in the cutting of Timber, the Leſſor may have an Action of Covenant before the end of the Term for that.

And if the Leſſee for years covenant and grant for him and his Executors with the Leſſor, to repair the Houſes as often as need requires, and after the Leſſee aſſigns over his term, and the Aſſignee ſuffers the Houſes to decay; in this Caſe an Action of Covenant lies againſt the Aſſignee, although he be not named in the Covenant. Mich. 44 Eliz. in B. R. Dean and Chapter of Windſor's Ca. Co. 5 par. f. 24. Hughes's grand Abr. 1 par. p. 492. c. 19.

If the Leſſor covenant with the Leſſee, that he ſhall have ſufficient Hedge-bote by the Aſſignment of him or his Baliff; here he may not take it without Aſſignment, *Quia modus & Conventio vincunt Legem.* Co. 1 par. Inſt. f. 41. B. Dyer, f. 19.

If a man take a Leaſe by Indenture of a ruinous Houſe, or that wanteth Reparations, and do Perkins Tit. *Conditions.* 738. M. 1649. B. R. Styles prac. Reguſt. p. 79.

do Covenant in the Leaſe to leave the Houſe at the end of the term in good Repair; here he is bound to leave it in good Repair whatſoever happen, by the Rule aforeſaid: but if he do not covenant to doe it, he is not bound by Law in ſuch caſe to doe it.

Paſc. 14 H. 8. 32. Perkins 738. 40 E. 3. 6. Hughes's gr. Abridgment, p. 499. c. 2. Philips's Principles of Law, p. 2.

If a Leaſe for Years be made of a Wood by Deed indented, and it is there covenanted that the Leſſee ſhall leave the Leſſor's Wood in as good plight as it was at the time of the Leaſe made, and during the term the Wood is deſtroyed by a ſudden Tempeſt; in this caſe the Leſſor can have no Action of Covenant againſt the Leſſee, for the non-performance of this Covenant, for it is not poſſible for him to perform the ſame, and *Lex non cogit Impoſſibilia*.

22 H. 6. See Goldsborough's Rep. p. 16. in the end.

If a Leaſe be made for Years ren-

rendring Rent, and the Leſſee is bound to perform all Covenants and Agreements, if he do not pay the Rent the Obligation is forfeited; for the paiment of the Rent is an Agreement.

If a man be bound in an Obligation to repair the Houſes of the Obligee as often as need ſhall require during ſuch a time, and after the Houſes need Reparations; in this caſe, though the Obligor knoweth not that they need Reparations, yet he is bound to take notice at his peril, for Ignorance here excuſeth not. Dr. & Stud. lib. 2. cap. 47.

But if the Condition had been to repair ſuch Houſes as the Obligee ſhould aſſign, and after he aſſigneth, &c. but the Obligor hath no notice of it; here the ignorance ſhall excuſe him, for the Obligee ought to give him notice: but if the Aſſignment Dr. & Stud. ibid.

ſignment had been appointed to a Stranger, there the Obligor muſt have taken notice at his peril.

Lit. 166. 26 H. 8. 3. Finch, lib. 2. c. 3. p. 115.

If a Leaſe for Years be made with Warranty, this ſounds not in the nature of a Warranty, but of a Covenant, becauſe it is but a Chattel; and if the Leſſee be ouſted, yet he may have an Action of Covenant.

Paſch. 9 E. 4. 1. P. 24 E. 4. 34. P. 45 E. 3. 3. M. 44 E. 3. 37. Perkins, 825.

If I be ſeiſed of 10 Acres of Land, and leaſe the ſame to a Stranger for Life or Years, reſerving 10ˢ Rent to me, &c. payable at the Feaſt of *Eaſter*, and the Leſſee doth bind himſelf to me in a bond of 100 pound, to pay the Rent reſerved upon the Leaſe juſtly according to Law; if before any day of payment I do put the Leſſee out of part of the Land, and he doth occupy the reſidue for the whole term, and will not pay

pay any Rent, yet the Bond is not forfeited; for by the putting out of the Leſſee of parcell of the Land the whole Rent is in ſuſpence: but if one day of payment be incurred before the ouſter, then he muſt pay the Rent, or elſe the Bond is forfeited. in B.R. Page and Par's Caſe, Styles Rep. 243.

If a Stranger who hath not any right doth put out the Leſſee for years of the ſame Land before any day of payment, and keep poſſeſſion thereof until the day of payment be paſt, yet the Leſſee ought to pay me the Rent at the day whereon it ought to be pay'd, or otherwiſe he forfeits his Bond. 22 H 6. ac. Perkins, 826. See Paradine & Joxe's Caſe. M. 23 Car. in B.R. Styles Rep. f. 47, 48.

If three Copartners be ſeiſed of a Mannor, and one of them in her own name, and without the agreement of the other two, doth leaſe the whole Mannor unto *I. S.* for 4 years, yielding 5 pound yearly at the Feaſt P. 9 E. 4. 1. M. 12 H. 8. 3. Perkins, 828.

Feast of *Easter* unto the Lessor and her Heirs, and *I. S.* doth bind himself in 40 pound unto his Lessor to pay the Rent reserved, &c. and before any day of payment the other two Copartners which did not consent to the Lease do put the Lessee out of the whole Mannor, and keep the possession until the day of payment of the Rent be incurred; yet it behoveth the Lessee to pay the Third part of the Rent reserved to his Lessor, otherwise he forfeits his Bond: for the two Copartners who put him out have no Right but to two parts of the Mannor.

28 Eliz. Lord Stafford's Case. 28 Eliz. in C. B. Leeds and Crompton's Case. Hughes's gr. Abr. 1 par. p. 428. 4 & 5 P. & M. Dyer 152. Vid. Co. 4 par. Dumper's Case. 45 Eliz. in B. R.

If a Lease be made to three upon Condition that they nor any of them should aliene without licence, if the Lessor give leave to one of them to aliene, now the other two may aliene without licence; for the Condition

dition being determined to one is determined to all.

If the Leſſor do enter for Condition broken, or the Leſſee do ſurrender, or the Term end; yet the Leſſor may have an Action of Debt for the Arrearages. Noye's Maximes, pa. 72.

If a Leaſe be made upon Condition that the Leſſee ſhall not aliene to *A*; if the Leſſee aliene to *B*, and he aliene to *A*, the Condition is not broken; for a Condition that goes to the breaking of an Eſtate ſhall be taken ſtrictly. Dr. & Stud. lib. 2. c. 35. M. 31 H 8. Dyer, f. 45. Co. l. 8. f. 90. b. 7 E. 4. 13. & Philips's Pr. of Law, p. 14.

If a man ſeiſed of Lands in Fee leaſe the ſame to a Stranger by Indenture for five years, upon Condition that if the Leſſee pay to the Leſſor five pound within the two firſt years, that then he ſhall have Fee in the ſame Land; in this caſe if he pay the mony, he hath a good Eſtate in Fee, if Livery and Lit. lib. 3. cap. 5. Co. 1 par. Inſt. f. 216. a. b. 217. a. b. Vide Lord Staford's Caſe. Co. 8 part, f. 73. Vide Herne's Law of Conveiance, p. 48. & ſee Nichols Caſe. Pl. Com. f. 487. & Kitchin, f. 219. a.

and Seiſin were made according to the Deed.

Perkins 708, Vid. 9 H. 6. 29.

But if a man ſeiſed of Land in Fee leaſe the ſame to a Stranger for years, upon condition that if the Leſſee be ouſted within the term by his Leſſor, that then he ſhall have Fee; here if the Leſſee be ouſted by a Stranger without the Leſſor's aſſent, he ſhall not have Fee.

Perkins 710.

If a man ſeiſed of Lands in Fee leaſeth the ſame to a Stranger by Indenture, yielding 5 pound by the year, and the Indenture is, that if the Leſſee will hold over 10 years to him and his heirs, that he ſhall then pay 20 pound by the year, and Livery and Seiſin is made to the Leſſee accordingly; in this caſe for the Rent behind within the 10 years the Leſſor ſhall have an Action of Debt, which proveth the Free-hold and the Fee are not in the Leſſee before the

10 years ended: but if when the ten years be paſt and ended the Leſſee doth continue the poſſeſſion of the ſame Land, and doth occupie the Land by force of the Indenture, then he hath Fee, and ſhall pay the 20 pound as a Rent ſect. But if a man ſeiſed of Land doth leaſe the ſame Land for Life, yielding unto him a Roſe for the firſt ſix years, and if he will hold the Land over the ſix years, that he ſhall pay 3 Marks by the year; in this caſe the Leſſee hath the Free-hold preſently.

M. 40 E. 3. 27. Perkins, 711. Coo. 1 par. Inſt. f. 218. b.

If a Leaſe for Life or Years be made upon Condition, that if the Leſſee kill *I. S.* within the term, that then he ſhall have and hold the Land leaſed unto himſelf and his Heirs for ever; now if he kill *I. S.* within the term, yet his Eſtate is not inlarged thereby, becauſe the Condition is againſt Law, & the Eſtate doth

4 H. 7. 4. 8 E. 4. 13. P. 2 E. 4. 3. 3 Perkins, 725, & 723 Vide Herne's Law of Conv. p. 115.

doth begin to be inlarged upon the performance of the Condition; yet the Leaſe is good, becauſe the ſame doth not begin by the Condition.

Perkins, 729, 730.

If a Leaſe be made for Years upon Condition, that if the Leſſor do aliene the Reverſion within the term, then the Leſſee ſhall have Fee, and the Leſſor doth aliene the Reverſion in Fee by Fine to a Stranger; now in this caſe the Leſſee ſhall not have Fee, for the Free-hold and the Fee are lawfully in the Conuſee before the Leſſee can take it by Condition: but if the Leſſor had granted by Deed onely to a Stranger, then the Leſſee ſhould have had Fee by the Condition; and the reaſon is, becauſe the Reverſion is not in the Grantee before Attornment.

Perkins, 833. Terms of the Law, verb. *Priſe.* Vide 21 H. 7. 18. a. & Co. 1 part of Inſtit. f. 214. b.

If a man have a Leaſe for

Years,

Years, and demiſe or grant the ſame upon Condition, &c. and die; his Executors or Adminiſtrators ſhall enter for the Condition broken, for they are privie in right, and repreſent the perſon of the dead.

All Grantees of Reverſions may enter upon Farmers for any Forfeiture or Condition, and have like advantages againſt them (by Action onely) for any other Covenants, Conditions or Agreements contained in the Indentures of their Leaſe, as the Leſſors, their Heirs or Aſſigns might; and the like for the Leſſees againſt the Grantees of the Reverſions (Recovery in value onely excepted.) 32 H. 8. c. 34. Finch, l. 2. c. 2. pa. 107. Herne's Law of Convey. p. 31.

If a man make a Leaſe for Years upon Condition that the Rent ſhall be paid at *Michaelmas*, and in the mean time give a general Releaſe to the Leſſee Lit. l. 3. c. 8. Co. 1 par. Inſt. f. 292 b. 45 E. 3. 8. 17 H. 6. 26. Cowel's Inſtit. p. 193. Noye's Maximes, p. 77.

of all Actions and Demands; yet this doth not remit the Rent, but the Leſſor may ſue for it: and the Reaſon of this is, becauſe it was neither *Debitum* nor *Solvendum* at the time of the Releaſe made; and it is a thing not merely in Action, becauſe it may be granted over.

Vid. 3 E. 6. Dyer 67. Farrington's Caſe. Cowel's inſtit. 199.

If two take a Leaſe joyntly for Years with Condition, that if the Leſſees die before the term ended the Leaſe ſhall be void; now the Leſſees make diviſion, and one of them alienateth his part, and dies; in this caſe the Leſſor cannot reaſſume the part of him that died, but the Alienee ſhall have it during the life of him that ſurviveth.

Hil. 36 Eliz. Rot. 376. Cole and Taunton's Caſe. Goldsb. p. 184. pl. 122. Vid. the Caſe 31 H. 8. 45.

If a Leaſe be made for Years upon Condition, that if the Leſſee demiſe the premiſſes or any part thereof other then for

a year to any perſon or perſons, then the Leſſor and his Heirs may re-enter; the Leſſee after deviſes it to his Son by his Will; this is a breach of the Condition.

If a man of his mere motion enfeoffe *H.* by Indenture upon Condition that he ſhall yearly pay to *I. S.* out of the Lands a certain Rent, and if he fail in payment, that it ſhall then be lawful to the ſaid *I. S.* to enter, &c. the Rent is behinde and unpaid; in this caſe *I. S.* may not enter by Law, for there is an ancient Maxime, That no man ſhall take advantage of a Condition unleſs he be party or privy to it. Dr. & Stud. lib. 2. cap. 20. fo. 93. a.

If the Grantee of a Rent-charge releaſe parcel of the Rent to the Grantour or his Heirs, the Remainder may be apportioned, and the Land ſhall remain chargeable ſtill for the Dr & Stud. lib. 2. c. 16. 21 H. 7. 2. Co. 1 par. Inſt. fo. 147. b. 148. a. H. 14 Eliz. in C. B. Godbolt 139. Harding's Caſe. M. 30 Eliz. in B. R.

residue: but if he releaſe in one Acre parcel of the Land charged, then all the Rent is extinct and gone.

49 E. 3. 15. Finch lib. 1. c. 3. p. 36. If the Leſſor grant a Rent to a Stranger, the Tenant cannot Attorn nor put him in poſſeſſion by the delivery of an Ox or ſuch like thing; becauſe it is another thing: but upon a Recovery of a Rent, the Sheriff may deliver poſſeſſion by ſuch a thing.

14 Eliz. Pl. 418. Finch, l. 1. c. 3. p. 42. If one that hath a Leaſe for Years grant his term to a Feme Covert and to another, or if a Feme ſole and another be Joint-tenants for years, and ſhe take a Husband; yet the Eſtate of the Feme and Jointure doth continue, ſo as the Survivor of the Wife or of the other ſhall have the whole Eſtate.

37 H. 6. 27. 26 F. 3. 69. 14 H 8. 13. Bract. l. 4. f. 207. Fleta, l. 3. c. 12. Co. 1 par. Inſt. f. 42. a. Herne's Law of Conv. p. 45. If a man grant an Eſtate to a Woman *dum ſola fuit*, or *durante*

rante viduitate, or *quamdiu ſe bene geſſerit*, or to a man and a woman during the Coverture, or as long as the Grantee dwells in ſuch an houſe, or ſo long as he pays 10 pound, &c. or until the Grantee be promoted to a Benefice, or for any like incertain time; in all theſe caſes, if it be of Lands or Tenements, the Leſſee hath in judgment of Law an Eſtate for Life determinable, if Livery and Seiſin be made.

And if it be of Rents, Advouſons, or any other thing that lies in Grant, he hath a like Eſtate for Life by the delivery of the Deed. Co. 1 par. Inſt. f. 42. a.

If a Leſſee for another man's Life die, living the other man, he that doth firſt enter upon the Eſtate after his death ſhall be Tenant *pur auter vie*, that is, Tenant for the other man's Life, and ſhall be liable to the pay- Brit. f. 83. Fleta l. 3. c. 12. Brac. l. 4. f. 170. Co. 1 par. Inſt. f. 41. b.

ment of the Rent reſerved, and in Law is called an Occupant, becauſe his Title is by his firſt Occupation.

Co. ibid. 27 Aſſ. p. 31. Pl. Com. fo. 28. b. in Col hirſt's Caſe, tit. Barr 303.

And ſo if a Tenant for his own Life grant over his Eſtate to another, if the Grantee die, living Tenant for Life; in this caſe he that firſt enters ſhall be an Occupant: in like manner it is of an Eſtate created by Law; for if Tenant by the Courteſie or Tenant in Dower grant over his or her Eſtate, and the Grantee dieth during their Lives, in this caſe alſo there ſhall be an Occupancy.

Co. ibid.

But there can be no Occupant againſt the King, for *nullum tempus occurrit Regi.*

11 H. 4. 42. 17 E. 3. 48 Dyer. 8 El. 253. Co. 1 par. Inſtitut. f. 41. b.

It were good, ſaith my Lord *Cook*, to prevent the incertainty of an Eſtate of the Occupant, by adding theſe words, [To have and to hold to him and his Heirs during the life of

Ceſtui

Ceſtui que vie:] and this ſhall prevent the Occupant.

And if a man hath an Eſtate already for another's Life without the words before named, then it is good for him to aſſign his Eſtate to divers and their Heirs during the Life of *Ceſtui que vie.* Co. 1 par. Inſt. ibid.

If a Leſſee for 20 years of Lands and Tenements grant the ſame Lands for parcel of the years to a Stranger, reſerving to himſelf 20 ſhill. in this caſe he may diſtrain for the Rent reſerved, or have an Action of Debt at his pleaſure, becauſe by common intendment he is to have the ſame Land after the years determined, becauſe he hath granted but parcel of the years, ſo that the Remainder remains in him. Perkins, 693.

But if *Ceſtui que uſe* leaſe his Land in Uſe for term of Years, reſerving Rent by word Perkins, 692.

of mouth; in this caſe he cannot diſtrain for the Rent reſerved, becauſe no Reverſion doth remain in him; but it is ſaid he may have an Action of Debt for it, but ſome doubt of it.

Perkins, 91. Co. 1 part Inſt. f. 46. b. If I leaſe Lands to another for Years, the term to begin at the Feaſt of *Eaſter* next, and before the Feaſt the Leſſee grants his term to a Stranger; this is a good Grant, for he hath an Intereſt before Entry which may be granted over.

Perkins, 91. If Rent be granted to me, I may grant it away to a Stranger, before I be ſeiſed thereof.

Perkins, 108. If a man grant to another Common of Paſture for 10 Kine in Lands in ſuch a Town, though the Grant be general, yet the Grantee ſhall not have Common but in Lands Commonable, ſo as the Grant ſhall extend but to Paſture-grounds.

Te-

Tenant at Will cannot grant over his Eſtate, for he hath no Intereſt certain. 27 H. 6. f. 3. b. Kuchin, p. 237. a.

If a Leaſe be made to Baron and Feme for term of their Lives, the Remainder to the Executors of the Survivor of them, if the Husband grant away the term and die, yet this ſhall not bar the Wife. Hil. 17 El. in B. R. Co. 1 part Inſt. f. 46. b.

If the Husband and Wife be ejected of a Term in the right of his Wife, and the Husband bring an *Ejectione firme* in his own name, and do recover, & die; in this caſe his Executors ſhall have it, and not the Wife, for the Recovery in his own name did veſt the Term in himſelf. Co. 1 part Inſt. f. 46. b. 37 Aſſ. p. 11. Pl. Co. 418. b.

If a man be poſſeſt of a Term of 40 years in right of his Wife, and make a Leaſe for 20 years, reſerving Rent, and die; here the Executors of the Husband ſhall have the Rent for that Term, but the Wife ſhall have Co. ibid. Pl. Co. 260. b. Dame Hale's Caſe. Co. 1 part Inſt. f. 351. a. See Finch l. 1. c. 5. p. 72. & Dyer 264. b. Heme's Law of Conv. p. 81, & 82.

the Remainder of the Term when the 20 years is out; but if he had granted the whole Term, then ſhe had got nothing.

Co. 1 part Inſt. fo. 270. a. 49 E. 3. 28. 32 H. 6. 8 Co. ibid f. 46. b. Perkins, 602. See the Clerk of Aſſize, P. 50.

A Releaſe made to Tenant for Years before his Entry to encreaſe his Eſtate is void; but a Releaſe of the Rent before Entry is good. The Tenant may grant away his Intereſt to another before Entry; and although the Leſſor die before Entry, yet the Leſſee notwithſtanding may enter into the Lands; or if the Leſſee die before Entry, his Executors or Adminiſtrators may enter: and if the Leaſe be made to two, and one die before Entry, yet his Intereſt ſurvives.

Co. 1 par. Inſt. fo. 46. b.

The Leſſor cannot grant away the Reverſion (before the Leſſee's Entry) by the name of a Reverſion.

If

If a man grant to a Leſſee for years, that he ſhall have ſo many Eſtovers as ſhall ſerve to repair his Houſe, or that he ſhall burn within his Houſe, or ſuch like, during the Term; this is appurtenant to the Land, and ſhall run with the ſame as a thing appurtenant in whoſe hands ſoever the ſame cometh.

12 El. 381. Finch, l. 1. c. 3. p. 15. Vid. Lutterell's caſe. 43 El. in B. R. Co. 4 lib. f. 86. & Co. 1 par Inſt. f. 41. a. vide Co. 5 l. in Spencer's caſe.

If a Leſſee for years grant a Rent-charge and ſurrendreth, the Rent ſhall be paid during the Term to the Stranger.

1 El. 198. Finch, lib. 1. cap. 3. p. 27. Noye's Maximes, p. 7.

If 2 Tenants in common do grant a Rent of 10 ſhill. this is ſeveral, and they ſhall be charged with 20 ſhill. Rent; but if they make a Leaſe and reſerve 10 ſhill. Rent, they ſhall have no more but onely 10 ſhill. between them.

Pl. Com. Hill & Grange's Caſe. 171. 2 & 3 P. & M. 140. b. 161. b. Finch, l. 1. c. 3. p. 63. Co. 1 par. Inſt. f. 197. a.

If a man make a Leaſe, provided that the Leſſee or his Aſſigns ſhall not aliene the premiſſes without ſpecial licence of the

F. N. B. 223. Mich. 3 Jac. in C. B. Co. 1 par. Inſt. f. 52. b. 45 El. in B. R. Dumpor's Caſe. Co. 4 l. f. 119. Hern's Law of Conveyancers, 110.

the Lessor, &c. and after the Lessor giveth licence to alien the same or any part; in this case the Lessee may alien and his Assigns *ad infinitum* without any more License, for the Proviso is determined for ever; and if the Lessor die before the Lessee alien, yet that does not countermand it.

M. 3 E. 6. Dyer 65 66. Hughes's gr. Abr. 1 part. p. 417.

If the words of a Lease be, that it shall not be lawful for the Lessee to alien without the assent of the Lessor, on pain of Forfeiture; this Restraint continueth but during the Life of the Lessor and Lessee.

Dyer f. 75. Cowel's Inst. p. 142, 143. Bro. Chattels 23. Done 57. Herne's Law of Conv. p. 81.

If a Lessee for years devise his whole term to *A*, provided if he die while *I. S.* is alive, then the Residue shall remain to *I. S*; *A* alienes and dies: in this case *I. S.* is without remedy.

27 H. 8. 19. Finch. li. c. 3. p. 65.

If a man make a Lease for years,

years, reſerving Rent to him, without naming his Heirs, the Rent ſhall then determine upon his death, if he die within the Term; or if it be to him and his Aſſigns or Executors, it is all one: but if it be reſerved generally without ſhewing to whom, it ſhall go to his Heirs. Mich. 5 Jac. *inter* Wotton & Edwin in B.R. Co. 1 part Inſt. f. 47. a. Goldsbor. Rep. p. 148. pl. 68. Vid. *Pacis Conſultum*, p. 92.

If a man leaſe Land to another by Deed indented, except and alwaies reſerved to the Leſſor all great Trees growing upon the ſame Land; by this Leaſe the great Trees ſhall not paſs. See 17 El. in B.R. *inter* Pepal & Hammington. Poph. 117, & 118.

If two Copartners make a Leaſe, reſerving Rent, they ſhall have this Rent in common as they have the Reverſion; but if afterwards they grant the Reverſion excepting the Rent, then they ſhall be Joyntenants of the Rent. Finch l. 1. c. 3. p. 9.

If a man let Lands for years, reſerving Rent, and a Stranger doth Dyer 56, & 82. Co. 1 par. Inſt. f. 148. b. Hughes's gr. Abr. p. 193. 1 par c. 6.

doth recover part of the Land, then the Rent ſhall be apportioned, that is to ſay divided, and the Leſſee ſhall pay, having reſpect to that which is recovered and to that which yet remaineth in his hands, according to the value.

2 & 2 P. & M. 104. Finch, l. 1. c. 3. p. 18. Perkins 643. 11 E. 4. 2. Philipps Pr. of Law, p. 122.

If a man make a Leaſe of a Mannor except an Acre, this Acre is no part of the Mannor as to the Leſſor, but as to him that hath right to demand the Mannor, by an eigne Title it remains parcel, and therefore he ſhall make no fore-priſe in his Writ.

Finch ibid. p. 53.

A Leaſe of a Mannor excepting the Services, the Exception is void, for it is parcel of the thing let.

14 H. 8. 1.

If one make a Leaſe excepting a Cloſe and Wood, now the Law giveth him a way to come to it.

Noye's Maximes, p. 59.

If the Leſſor make a Feoffment,

ment, and the Leſſee for years giveth leave to the Leſſor to make Livery and Seiſin of the premiſſes, ſaving to himſelf his Leaſe, and he doth ſo; here the Term is not ſurrendred, for the Leſſee had an Intereſt which could not be ſurrendred without his conſent to ſurrender, and here no ſuch intent doth appear, wherefore he may enter and have his Term, and the Rent is renewed: but it is otherwiſe with a Leſſee for Life, for there the Rent is extinct.

If a Leſſee for years do take a new Leaſe for more years, this is a Surrender in Law of the old Leaſe. Perkins 117. Vide Watt & Maidwell's Caſe, Hil. 3 Car. rot. 1302. B.R. Hutton's Rep. 104.

A Leſſee for years cannot ſurrender before his Term begin, neither can he ſurrender part of his Leaſe, but he may grant part of it. Perkins 601. Noye's Maximes, 74.

If two Joynt-tenants in Fee are of one Acre of Land, and 5 E. 3. 19. & ſee Perkins, 80.

leaſe

leaſe the ſame Acre to a Stranger for Life, and the Leſſee granteth his Eſtate to one of the Leſſors; this is a Surrender for the whole Acre, and not for a Moiety. *Tamen quære.*

If a Leſſee for Life of an Acre of Land leaſe the ſame Acre to his Leſſor for years, the Remainder to a Stranger in Fee; this is no Forfeiture, though he do make Livery and Seiſin to the Leſſor.

Herne's Law of Convey. p. 76. Perkins, pl. 609.

If a Leſſee for Life or Years of Land ſay to his Leſſor, that he will occupy his Lands no longer which he holdeth of him for Life or Years, and ſo wills him to enter; in this caſe if the Leſſor conſent, it is a good Surrender.

3 Aſſ. p. 20. Tr. 8 E. 3. 46. Perkins, 117.

But if the Leſſee for Life or Years of a Houſe and Lands remove his goods out of the Houſe and Land, by reaſon of the greatneſs of the Rent, or be-

becauſe he is behinde in his Rent, or for any other cauſe, and the Leſſor do enter into the Houſe and Lands; this is no Surrender of the Tenant.

If a Leſſee for Years aſſign over his Term and die, his Executors ſhall not be charged for Rent due after his Death. *Noye's Maximes, p.72.*

37 El. B.R. Overton and Siddal's Caſe, cited in Co. 3. l. in Walker's Caſe there.

If the Executors or Adminiſtrators of a Leſſee for Years do aſſign over their Intereſt, neither doth an Action of Debt lie againſt them for Rent due after the Aſſignment.

Co. ibid. in Walker's Caſe *ut ſupra*, Noye's Maximes, p.72.

If a Leſſee aſſign over his Term, the Leſſor may charge which of them he will; but if he once accept of the Rent from the Aſſignee knowing of the Aſſignment, he cannot then after bring an Action of Debt againſt the Leſſee for Rent due after the Aſſignment.

Marrow & Turpin's Caſe. P. 41 Eliz. Roc. 2485. Vide March & Brace's Caſe. M. 11 Jac. in B.R. Buſſt. 2 part 151. Hern's Law of Conv. p. 110.

If the Leſſor grant away the Rever-

36 Eliz. Ungle & Glover's Caſe.

Vid. Co. 3 l. in Walker's Caſe there: and ſee Humble & Oliver's Caſe. M. 36. El. in B. R. Popham, 55.

Reverſion after the Aſſignment of the Leſſee; in this caſe the Grantee cannot have an Action againſt the Leſſee for the Rent, becauſe there is no privity between them.

19 E. 3. Surr. 8. Co. 1 par. Inſt. f. 42. a.

If a Tenant for Life enfeoff him in Remainder for Life, this is a Surrender, and no Forfeiture.

Co. ibid. 13 R. 2. Dower 95.

If a Tenant for Life make a Leaſe by Deed, or without Deed, to him in Remainder or Reverſion, and after he in Remainder taketh wife and dieth; in this caſe ſhe ſhall not be endowed, for the Tenant for Life ſhall injoy the Land again, for it cannot be a Forfeiture, becauſe he in Remainder was a party; and Surrender it cannot be, for that his whole Eſtate was not given.

Co. 1 par. Inſt. f. 42. a. 29 Aſſ. p. 64.

If a Tenant for Life take an Husband, and by Deed indented they make a Leaſe to him in

in the Reverſion for the Life of the Husband, reſerving a Rent; this is neither Forfeiture nor abſolute Surrender, for the reaſons in the laſt Caſe mentioned.

But if a Tenant for Life take Husband, and they by Deed indented make a Leaſe to him in Reverſion for the Life of the Wife, reſerving Rent; this is a Surrender, for their whole Eſtate is granted, and the Reſervation is void.

If a Leſſee for 20 years take a Leaſe for 10 years to begin preſently, upon Condition if ſuch a thing be not done to be void: now the firſt Leaſe is ſurrendred in Law; and though the ſecond Leaſe be void upon the Condition broken, yet the Surrender remaineth good. Co. 1 par. Inſt. f. 218. b. Pl. Com. in Fulmerſton's Caſe. 107. b. Vid. Poph. Rep. f 9. V. Herne's Law of Conv. p. 73, & 74. Finch. l. 1. c 4. p. 62. 1 & 2 P. & M. 107.

If a Leaſe for years be made to a man without any Conſideration, the Leſſee ſhall be ſeiſed to his own uſe. Perkins, 536.

If

Dr. & Stud. l. 1. c. 24. See the Clerk of Assize. p. 63.

If a man make a Leaſe to another and his Heirs for 20 years, intending that his Heirs ſhall have it; yet if the Leſſee die, notwithſtanding the intent, the Executors, and not the Heir, ſhall have it.

Pl. Com. f. 85. b. & f. 270, 273. 31 H. 8. tit. Leaſe 55. 23 H. 8. tit. Feoffment 53.

If a man let a Houſe *cum pertinent*, no Lands paſs; but if it be *cum omnibus terris pertinent*, here the Lands uſed with the ſame do paſs. *Herns L. of Con. p.* 104.

Er. Eſtoppel 221. M. 31, 32 El. in C. B. in London's Caſe adjudged. Co. 1 part Inſt. f. 47. b. Vide Terms of the Law, verb. *Eſtoppel.*

If a man take a Leaſe of his own Land by Deed indented, he is then concluded to ſay that the Leſſor had nothing in the Land at the time of the making of the ſaid Leaſe, but after the Leaſe is out the Eſtoppel is removed.

24 Car. See Beverley's Caſe. Clayton's Rep. p. 111. pl. 189. & ſee Green's Caſe An. 1650. Idem p. 146. pl. 265.

If two Joynt-tenants are of a Leaſe for Years, and one bid the other go out of the Houſe, and he does ſo; in this caſe he may have an *Ejectione firme* againſt his

his fellow as well as if he had put him out by force.

CHAP. III.

Of Payments, Rents, Acceptance, Confirmations, Extinguiſhments, Demands, Reentries, Limitations, &c. of Leaſes.

IF the Leſſee be to pay his Rent to his Leſſor at *May-day* and *Martinmas*, or within 15 daies next after either of the ſaid Feaſts; in this Caſe the Tenant need not pay till the 15th day, for that is the legal day, and the other onely a voluntary day of Payment: and if there be a Clauſe, that if the Rent be behind by the ſpace of 15 daies after any of the ſaid daies of payment, then the Leaſe

Vide Clun's Caſe 11 Jac. in B. R. Co. 10 lib. f. 227. Co. 1 part Inſt. f. 202. a. And ſee Hare & Savil's Caſe, M. 7 Jac. in C. B. Brownloe's 2 part, p. 273. Herne's Law of Conv. p. 23.

to

to be void; in this case the Lessee shall have 30 daies after either of the Feasts to save his Lease: but if the Clause in the Lease be, that if the Rent be behind for the space of 15 daies next after either of the said Feast-daies of payment; here the Tenant hath but 15 daies onely allowed him: and so the diversity is to be noted.

Co. 1 par. Inst. f. 44. b. Vid. Lord Mount-joy's Case. Co. 5. l. f. 3. Anno 31, 32 Eliz. in B. R.

If a Tenant in Tail let part of the Land accustomably let-ten, reserving the Rent *pro Rata* or more, this is a good Lease for such Lands: or if the accustomable Rent were formerly payable at four Feasts, and now it is reserved and payable all at one Feast, yet it is good enough.

11 Jac. in B. R. Clun's Case. Co. 10 l. f. 227. See Hare & Savil's Case. M. 7 Jac. in C. B. Brownl. Rep. 2 part. p. 273. V. Hern's Law of Conv. p. 22, & 23.

If a man lease for Years, rendring Rent at the Feasts of the *Annunciation* and *Michaelmas*, or within 15 daies after; here if the Lessor dy after either of the

the Feaſts and before the 15 daies be out, the Heir ſhall then have the Rent; for the disjunctive is added for the benefit of the Tenant; and the firſt day is but voluntary, but the legal payment is at the end of the 15 daies: and if the Leſſee before the day pay the Rent, this is voluntary, and not ſatisfactory; but it is good to give Seiſin, if payment be in the Morning and the Leſſor die at Noon; though this payment be voluntary too, yet it is ſatisfactory againſt the Heir.

If a man leaſe for Years, rendring Rent at *Martinmas* and other Covenants, if the Leſſee be bound in an Obligation to pay the Rent preciſely; in this caſe he muſt ſeek the Leſſor to pay him: but if he be bound to perform the Covenants, &c. he may then tender it upon the Land, (if no other place be agreed

See Manley and Jennings Caſe. Paſch. 10 Jac. in C.B. Brownlo. Rep. 2 par. p. 176. Noye's Maximes p. 80. 6 E 4. Br. Tender 20.

agreed upon) and it ſufficeth, for the payment is of the nature of the Rent reſerved.

1 Mar. 172. b. Finch, l.1.c.3.p. 38. Noye's Maximes, p.81. Vide Wade's Caſe. 43 Eliz. C.B. Co.5.1. f.111. Hern's Law of Conv. p.30.

Rent payable at a day, the party hath all the day till Night to pay it: but if it be a great ſumme, as 500 or 1000 pound, he muſt then be ready as long before Sun-ſet as the mony may be told; for the other is not bound to tell it in the Night.

32 H. 8. Bro. Diſmes 17. Finch, l.2.c.1.p.88.

If a Parſon let his Glebe to a Lay-man, the Leſſee ſhall pay Tithes to the Parſon beſides the Rent, becauſe they are of common Right.

See Clun's caſe. 11 Jac. Co. 10.l. f.227.

If a man make a Leaſe for Years, rendring Rent at the Feaſt of St. *Michael*; in this caſe if the Leſſor die on *Michaelmas*-day in the morning, if the Rent be unpay'd, the Heir ſhall have it; but if the Tenant pay it that morning before the Leſſor die, the Executors ſhall then have it.

If

If a man leaſe a Stock of Cattel or other goods, rendring Rent at ſeveral daies, he ſhall not have at Action of Debt till all the daies be expired; and ſo it is upon an Obligation; for theſe are perſonal Contracts: but in caſe of a Leaſe for Years, which is a real Contract, it is otherwiſe; for there the Leſſor may have an Action of Debt after every day, or he may diſtrain. Co. 1 par. Inſt. f. 47. b. & 292. b. F. N. B. 267.

A man is not bound to pay an Annuity without an Acquittance, but a Rent-ſervice or Rent-charge he is. See in Pennant's Caſe, 38 Eliz. Co. 3. l. Perkins, 780.

If the King make a Leaſe, rendring Rent, without limiting any place or to whoſe hands, the Leſſee may either pay it to the Exchequer, or to the Bailiffs or Receivers of the King: when a Common perſon appoints no place of payment, the Law appoints it to be upon the Land, Vide in Co. 4. lib. Borough's Caſe, 38 Eliz. in B. R. Co. 1 par. Inſt. f. 201. b. And ſee Goldsbor. Rep. p. 124. pl. 9. Hern's Law of Conv. p. 27.

and there the Demand must be made, as is shewed afterwards in this Chapter.

5 E 4.4.Co.1 part Inst.f 47.a. Co. 8 l. f.70,71.

If two Joynt-tenants be, and they make a Lease for Years by paroll or Deed-poll, reserving a Rent to one of them; yet this shall enure to them both: but if it be by Deed indented, it shall enure to him alone by way of Conclusion.

Trin.35 H.8.Dyer 56. 2 Mar.Dyer 100.and see 20 El.Dyer 361.

If a Lease be of Land and Sheep, and the Sheep die, or part of the Land is surrounded with the Sea; some are of opinion that the whole Rent shall issue out of the rest. *Tamen quære.*

See Goldsbor. Rep.p.98. pl.17. Trin. 30 El. Vide Herne's Law of Conv.p.22,& 24.

If a man lease Land and die before one of the Rent-daies, the Heir shall have the Rent due at the next day after his death; but if there were any Rent arrear at the Rent-day before the Lessor's death, the Executors or Administrators shall have that, and may either distrain

ſtrain or have an Action of Debt for it.

The Leſſor upon a Leaſe at Will may diſtrain for Rent arrear; but if he impound the Diſtreſs in the ground letten at Will, the Will is then determined. Co. on Lit. f. 57. b.

Upon a Leaſe for Years a man may reſerve the Rent to be in the delivery of Hens, Capons, Geeſe, Turkies, Oxen, Sheep, Roſes, Spurs, Bows, Shafts, Horſes, Hawks, Pepper, Cumine, Wheat, or other profit that lieth in Render, Office, Attendance, and ſuch like, as well as in paying of Mony. Co. 1 part Inſt. 142. a. and ſee Perkins, 696.

If the Heir make a Leaſe for Life reſerving a Rent, againſt whom the Mother recovers her Dower and dieth, the Leſſee ſhall have the Land again for his Life, and the Rent is revived. 7 H. 5. 4. Co. on Litt. f. 42. a.

The Acceptance of the Rent upon a void Leaſe will not 22 H. 8. Br. Acceptance 14.

Vide Browning's Case. Pl. Co. 136.

make the Leaſe good again; but if it be onely voidable, it wil.

Noye's Maximes, p. 70.

The Acceptance of a Redemiſe to begin preſently, is a Suſpenſion of the Rent before any Entry; but otherwiſe if it be to begin *in futuro.*

See Co. 3. l. in Pennant's Caſe there.

Acceptance of a Rent which is not *in Eſſe* nor due to him that accepts it doth not affirm the Leaſe: as where Lands are given to the Husband and Wife, and the Heirs of the body of the Husband, and he leaſes the ſame and dies, and the Iſſue accepts the Rent of the Leſſee in his Mother's life, and after ſhe dies; now the Iſſue may avoid the Leaſe, for when he accepted the Rent, it was due to his Mother, and not to him.

24 H. 8. Br. Leaſes 19. 32 H. 8. Br. Dean 20. Leaſes 52. See Co. 3. l. fo. 65, 66. in Pennant's Caſe See Revel & Hart's Caſe. Goldsb. Rep. pa. 138. pl. 44.

If the Succeſſor of a Parſon or Vicar accept the Rent of a Leaſe for Years made by his Predeceſſor, yet it is worth nothing; for the Leaſe is void by

by Death: but it is otherwiſe of a Leaſe for Life.

But if the Succeſſor of a Biſhop, Abbot or Prior, accept the Rent upon a Leaſe for Years, he ſhall never avoid it, for it was but voidable onely, and his acceptance hath now confirmed it. Co.ibid.2 F.6 Br. Leaſes 33.32 H. 8. Dyer 46.

If he that hath Rent-Service or Rent-Charge accepts the Rent due at the laſt day, and gives an Acquittance for it, all the Arrearages due before are thereby diſcharged. See Hopkins & Morton's Caſe vouched in Pennant's Ca. Co 3. l. Hern's Law of Conv.p.40. Co. 1 par.Inſt. f.373. a.11 H.4. 55. 10 Eliz. Dyer 271.

If Tenant in Tail make a Leaſe for 40 years, to commence 10 years after his Death, rendring Rent, and after he dies, and the Iſſue enters and enfeoffs *B*, the 10 years expires, & then the Leſſee enters, if *B*. accept the Rent, the Leaſe is good. Pl Co.f.437.a. Co.1 par.Inſt. f. 46. b.

If the Husband and Wife let the Land of the Wife for years, rendring Rent, and after the *Tamen quære.* P. 5 Mar. Dyer 160. and ſee 4 Mar. Dyer 141. Gough's Caſe.

Husband dies, and ſhe before any day of payment takes another, who accepts the Rent and dies; by this the Leaſe is affirmed.

If Tenant for Life leaſe Lands for years and dies, the Leaſe is void, and the Rent reſerved upon the Leaſe is determined, and Acceptance by him in Remainder will not make it good; for when it is once void by Death, no Acceptance after will make it good.

3 H. 6. f. 22 H. 6. f. ibid. 21 H. 6. 24. & Kitchin p. 234. B. Terms of the Law, verb. *Acceptance.*

If the Husband and Wife let the Lands of the Wife for years, rendring Rent, and the Husband dies, if the Wife accept the Rent, it is a good Leaſe.

22 H. 8. Br. Tit. Auncest. 14.

If Tenant in Dower leaſe for years and die, the Leaſe is void, and Acceptance of the Rent by the Heir will not make it good again.

1 E. 6. Br. 18 and ſee Finche's Law l. 1. c. 4. p. 68.

If a man ſeiſed in Fee let for

10 years, and after selleth the Land, and taketh back an Estate to him and his Wife, and then the Husband and Wife let for 20 years, reserving Rent, and the Husband dieth, the Wife accepts the Rent during the first 10 years; in this case the second Lease is not affirmed, for the Acceptance of the Rent before the Lease beginneth, and so before any Rent be due, is no Acceptance at all. 21 Eliz. 563. Phillips Prin. of Law, p. 164.

A Lease for Years may be confirmed for a time, or upon Condition, or for a piece of the Land; but if it be a Franktenement, it shall enure to the whole absolutely. Noye's Maxims, p. 78.

There is a diversity between a Lease for Life and for Years. In case of a Lease for Life, though the Conclusion of the Condition be that it shall be void, yet acceptance of the Rent due after the breach doth See in Pennant's case, 38 Eliz. Co. 3. l. f.

affirm it and make it good again; for the Free-hold being created by Livery cannot be determined before Entry.

See Foord's Ca. 37 El. in C.B. Co. 5. l. f. 81.

If a Prebend leaſe for 70 years, and Patron Dean and Chapter confirm the Demiſe aforeſaid in form aforeſaid made for 51 years and no farther; this is a Confirmation of all the Term: but if they had recited the Leaſe, and confirmed the Land for 51 years, this had been good. But by whatſoever words they confirm a Leaſe for Life, or Gift in Tail for part, this ſhall confirm all, becauſe they are intire.

Co. 1 part Inſt. l. 45. 11 H. 4. 1. 27 H. 8. 16.

If the Tenant of the Land and a Stranger join in a Leaſe for Years by Deed indented of the ſame Land, this is the Leaſe of the Tenant onely and Confirmation of the Stranger; and yet the Leaſe as to the Stranger works by Concluſion.

If

If two ſeveral Tenants of ſeveral Lands join in a Leaſe for Years by Deed indented, theſe be ſeveral Leaſes, and ſeveral Confirmations of each of them, and work not by way of Concluſion. Co. ibid.

If *B*, who is Tenant for Life of *C*, and he in the Remainder or Reverſion in Fee, make a Leaſe by Deed indented; in this caſe this is the Leaſe of *B* during the Life of *C*, and the Confirmation of him in Remainder; and after the Death of *C* it is then the Leaſe of him in Remainder, and Confirmation of *B*: and in this caſe there is no Concluſion. Co. ibid. Vid. Treport's caſe, M. 37 El. in B. R. Co. 6. f. 15. Vide Ellis & Chowne's caſe 44 El. in C. B. Rot. 1459.

If Tenant for Life and he in Remainder in Fee make a Leaſe by Deed indented, and the Leſſee be ejected during the Term in the Life of Tenant for Life, he muſt then declare in his Action of a Leaſe from Tenant Co. 1 par. Inſt. f. 45. a. 20 H. 8. f. 1. See Bredon's caſe 39 & 40 Eliz. Co. 1. l. f. 76. Vide Dyer 234.

for Life; and if it be after his Death, he then must declare of a Lease from him in Remainder.

Mich. 35 H.8. Dyer 58.

If *Cestui que use* make a Lease for 20 Years the first of *May*, to begin at *Mid-summer*, and the Feoffees make a Lease the second of *May* for 30 years to the Lessee, to begin at *Mid-summer* also; this is no Surrender of the first Lease, but it shall enure as a Confirmation for 20 years, & a new Lease for 10 years.

Vide Co. 1 part Inst. f. 300. See Dyer 69. See Parsons Law, chap. 4. Philipps Pr. of Law, p. 78.

If a Parson let a Lease for Years of his Glebe-land, if it be confirmed by Patron and Ordinary, it shall binde the Successor; otherwise not.

32 H.8. Br. Acceptance 13.

If Tenant in Tail lease his Lands for 20 years, rendring Rent, and die, and the Lessee leases to another for 10 years, and the Issue accepts the Rent of the second Lessee; this is no Affirmance of the Lease, for there is no privity between the se-

ſecond Leſſee and the Iſſue: contrary, if he accepts it of him as Bailiff of the Leſſee.

But if the firſt Leſſee had leaſed over all his Term in parcel of the Land let, and his Aſſignee pays the Rent to the Iſſue in Tail, who accepts it; this affirms the intire Leaſe; for Rent upon a Leaſe for Years is not apportionable. Bro. ibid.

If a man make a Leaſe to one for Life, and after confirm the Eſtate of the Tenant for Life, the Remainder over to *A B* in Fee, this is a void Remainder notwithſtanding the intent, for no Remainder can depend upon an Eſtate, but where the Eſtate begins at the ſame time when the Remainder doth; and in this caſe the Confirmation neither inlarged the Leſſee's Eſtate, nor gave him a new one. Dr. & Stud. l. 2. c. 20 f. 93. b.

But if a Leaſe be made to one Dr. & Stud. l. 2. c. 20. p. 93. b.

one for another man's Life, and after the Lessor confirms the Estate to the Lessee for the Lessee's own life, the Remainder over; this is good, for here the Estate is inlarged.

See Cibill and Hill's Case, M. 30 Eliz. in C. B. Leonard's Rep. 110. Vid Noye's Max. p. 70. & Howe & Broom, Hil. 43 El. Coldstorough Rep. p. 125. pl. 15. & p. 114. pl. 6. Herne's Law of Conv. p. 118.

If a man let Lands for Years or Life, reserving Rent, and do enter into any part thereof and take the profit, the whole Rent is thereby extinguished, and shall be suspended during his holding thereof.

See in Walker's Case, Co. 3. lib. & see Goddard's Case, Mich. 34 El. Com. Banco, Owen's Rep. f. 10.

M. 2, 3 Eliz. Dyer 187. & Finch l. 1. c. 3 p. 13.

If there be two Joint-tenants for Life, and one let his part for years, rendring Rent, and dies; the Term shall continue against the Survivor, but the Rent is gone.

Per Whorwood & Hales, Br. Extinguishment 54. Leases 63. Surrender 52.

If a man have a Lease for Years, as Executor to *A*, and after purchases the Reversion of the Land in Fee; the Lease is extinct, and yet it shall be Assets

ſets in the hand of the Executor.

It behoveth ſuch perſons as will re-enter upon their Tenants, to make demand of the Rent at the Houſe upon the Land, if there be one, (if the payment be not appointed elſewhere by the Agreement of the parties) where the Leſſor himſelf or his ſufficient Attorney, a little before Sun-ſet, in the preſence of 2 or 3 ſufficient Witneſſes, ſhall ſay, *Here I demand of* R. A. 10 *pound due to me at the Feaſt of St.* Martin *the Biſhop laſt paſt, for a Meſſuage, Barn,* &c. *which he holds of me in Leaſe by Indenture for* 20 *years, bearing Date,* &c. and ſo remain there upon the Land the laſt day that the Rent is due to be paid, until it be dark, that he cannot ſee to tell the money.

Co. 1 part Inſt. f. 201. b. 40 Aſſ. 11. Noye's Maximes, p. 83. Marche's Rep. p. 147. pl. 218. But note, it may be covenanted that the Leſſor ſhall re-enter without Demand, if both parties pleaſe.

But note, this Demand muſt be

49 Aſſ. 5. 15 El. Dyer f. 329. Perkins 838.

Co. 1 part Inſt. f. 201. b. 153. a. b. Herne's Law of Conv. p. 28.

be made at the Fore-door of the Houſe, and not at the Back-door; for if it be, it is not good, becauſe the Demand muſt be at the moſt notorious place, and it is not material whether any perſon be there or no: and if the Leſſee be in the houſe, and the door open, yet the Leſſor need go no farther then the Fore-door.

Dyer 329. 15 El. Perkins 838. Co. 1 part Inſt. f. 202. a. & 49 Aſſ. 5. See a pretty Caſe in Poph. Rep. 58. upon a Leaſe of two Barns, & the Leſſor demanded at the one, & the Leſſee did tender at the other, and it was held to be a good Tender to ſave a Re-entry.

If there be no Houſe, the Demand muſt be made at the moſt notorious place of the Land, as at ſome High-way leading through the ſame; for if it be either at the back-door of the Houſe, or ſome obſcure place in the ground, it is void, and the Leſſor ſhall not take advantage by ſuch Demand for Re-entry, or breach of any other Condition.

See Kidwell's Caſe, Pl. Com. f. 70. & Boroughs's caſe, 38 El. in B. R. Coo. 4. l. f. 73. Co. 1 part Inſtit. f. 202. a.

If the Rent be reſerved to be paied at any place from the Land, yet it is in Law a Rent, and the Leſſor muſt demand it at

at the place appointed by the parties, obſerving the Rules aforeſaid of the moſt notorious place.

But if the Leſſee come to the Leſſor at any place upon the ground at the day of payment, and tender his Rent to the Leſſor, this is good enough, and ſhall ſave the Condition, and the Leſſor is bound to receive it, although it were not at the moſt notorious place, nor laſt inſtant of the day; for he may tender it at any time of the day, though the laſt inſtant be the legal time of payment. Co. 1 part Inſt. f. cod. Perkins 837. Herne's Law of Conv. p. 29.

But this Tender muſt be of the whole Rent, without deduction of Taxes or Aſſeſsments, or other Charges. Tr. 23 Car. in B. R. Regeſt. Pract. p. 327. Co. 1 part Inſt. f. 202. a. 20 H. 6. 30.

Where one leaſes Land to another for Years, rendring Rent of the Land at the Feaſts of St. *Ellenmas* and *Martinmas*, or within 15 daies, and for default of See Pl. Com. Hill. and Grange's caſe, f. 167. 172. and Cranly and Kingſwell's Ca. Paſc. 15 Jac rot. 710. Hobart's Rep. f. 207. Hern's Law of Conv. p. 25, & 26, & 29. 6 H. 7. 3.

of payment to re-enter; in this case it is satisfactory and lawful for the Tenant to tender it the last hour of the last day, if the mony may be told in that time; and so it sufficeth for the Lessor to demand it the same hour.

Vide Trin. 36 El. Thyn & Cholmley's case, Goldsb. Rep. p. 186. See Sir Jo. Spencer & Sir John Poynes case, Tr. 5 Jac. in B.R. Godbolt's Rep. 154. & Remmington & Kingerbies case, 18 Car in B.R. in Styles Rep. 4. Sir Rich. Grobham and Thornborough's case, Hobart f. 82.

If a man grant a Rent-charge to another with Condition, that if the Rent be behind for ten daies after any Rent-day, that the Lessee, the Executors, &c. shall pay 3ˢ 4ᵈ for every day untill the aforesaid Rent so behind shall be satisfied; in this case the Rent must be demanded, or otherwise the *Nomine Pœnæ* shall never be recovered. *Hobart fo. 133. Howel's Case.*

Pennant's case, 38 El. Co. 3. l. 65. Vid. Green's case, 18 El. in B.R. Leon. Rep. 262. & March & Currie's case 40 El. C. B. rot. 1302. vouched in Pennant's case. Co. 1 par. Instit. f. 211. b. Pl. Com. fo. 133. Hern's Law of Conv. p. 26, & 94.

If a Lease be made upon Condition of Non-payment to re-enter, if the Lessor distrain he may not re-enter, but he may accept of the Rent, and yet re-enter; but if he receive the next Rent again, then he can-

cannot, for that eſtabliſheth the Leaſe. Entry into an Acre in the name of all is good enough, if the Land lie all in one County.

If a Leaſe for Years be rendring Rent, with Condition that if the Leſſee aſſign his term, the Leſſor may re-enter; the Leſſee aſſigneth, and the Leſſor receiveth the Rent of the hands of the Aſſignee, not knowing of the Aſſignment; now notwithſtanding the acceptance of the Rent, yet the Leſſor may re-enter if he pleaſe, for the receiving the Rent bars him not, becauſe he knew not of the Aſſignment. 38 El in Pennant's caſe. Co. 3. l. f. 65. & ſee 40 El. in C. B. Rot. 1302. in March & Currie's caſe vouched there. Hughes's gr Abr. 1 part, p. 14. C. 10.

In a Leaſe for Years, if the Leſſee covenant that if he, his Executors or Aſſigns, do aliene, that then the Leſſor ſhall re-enter, and afterwards he makes his Wife Executrix and dies, who takes Husband again, and 28 H 8 Dyer 7. Hughes's gr. Ab. 1 par. pa. 240. C. 1.

and he alienes; in this case the Lessor may re-enter, for the Husband is Assignee in Law.

21 Car. B. R. Styles Regestum Practicale, p. 196. Vide Hanson & Norcliff's case, Hil. 18 Jac. & Amphurst & Palmer's case, P. 19 Jac. Hobart 331.

A Lease which is onely voidable, and not absolutely void, must be made void by the Lessor's entry; but if it be absolutely void, there needs no Entry.

Dr. & Stud. l. 1. c 20 p. 35. a. See the Clerk of Assize, p. 56.

If a man make a Lease for Years yielding to him and his Heirs a Rent, upon Condition that if it be behind by the space of 40 daies, &c. that then it shall be lawful to the Lessor and his Heirs to re-enter, the Rent is behind 40 daies, &c. and is demanded by the Lessor, (as it ought by Law) and is not paid, and now the Lessor dieth; in this case his Heir may enter, for a Title of Entry descends.

Dr. & Stud. l. 1. c. 20. p. 35. a. Cl. of Assize, p. 57.

But if the Lessor had died after the Feast-day and before the 40th day, and the Heir there makes

makes a Demand at the 40th day; in this case he may not enter for non-payment: *ideo nota.*

If a Lease be made to *A* and *B* for their Lives, and after the Lessor grants the Reversion to *C* for his Life, to which Grant *A* attorns, and after by his Deed surrenders to *C* all his Interest and Estate and dies; in this case *C* may enter and hold in common with *B*. Tooker's case, 43 El. Co. 2. f. 39.

If a Lease be made to *A* for Life, and after the Death of *B* the Remainder to another in Fee; in this case if *A* die living *B*, the Remainder is void: and so if a Lease be made to *R* for Life, the Remainder to the right Heirs of *IS*; this is good if *R* outlive *IS*, otherwise it is void. Vide M. 27 E. 3. 87. Tr. 1 H. 7. 31. & Perkins 52. And see 29 El. in Borastón's case. Co. 3 lib. f. 19. 32 H. 6. Tit. *Feoffment & Faits*, 99. & Co. on it. f. 378. a. See the Clerk of Assize, p. 60. & Herne's Law of Conv. p. 8. Kitchin, f. 155. a.

If a Lease be made to *A* for 41 years, if he live so long, and if he die within the aforesaid 9 El. Dyer 254. & see Pl. Com. 190. Trin. 8 Eliz. Cecil's case. Dyer 253.

ſaid Term, that then the Wife of the aforeſaid *A* ſhall have it for the reſidue of the ſaid years; this Limitation is void, for if *A* die the Term ends, and the Wife ſhall have nothing.

Paſch. 14 El. Dyer 307.

If a man have an Houſe for 40 years, and deviſe the Houſe to *I S* without limiting any Eſtate; the Deviſee ſhall then have the intire Term, for he may not have for Life, nor at Will, nor for leſſer Term of years.

Br. Leaſes 66. & ſee the Rector of Cheddington's caſe, 40 El. Co. 1. l. f. 153.

But if a man have a Term of 30 years, and grants ſo many of them as ſhall be behind at his death; this is void for the incertainty, for he may live till all be out, and then nothing remains.

See Dyer f. 80. in the queſtions there for the L. Willoughby.

If a man let all his Meadow in *D*, containing 10 Acres; in this caſe, if there be 20 Acres, all paſs.

Litt. l. 1. c. 7. Vide Herne's Law of Conv. p. 35.

There needs no Livery and Seiſin

Seiſin upon a Leaſe for Years, but the Leſſee may enter when he will; and if there be Livery and Seiſin upon ſuch a Leaſe, to have according to the effect thereof, this Livery is void, and the Leſſee ſhall but have an Eſtate for Years.

A man makes a Leaſe for Years, and after makes a Deed of Feoffment, and delivers Seiſin, the Leſſee being upon part of the premiſſes, and not knowing nor aſſenting to it, this Livery is void; for though the Leſſor hath the Free-hold and Inheritance in him, yet the poſſeſſion is in the Leſſee, and Livery muſt be given of the poſſeſſion: but if the Leſſee be abſent, and hath neither Wife nor Servants (though he have Cattel) upon the ground, then the Livery ſhall be good.

Co. 1 part Inſt. f. 48. b. See Bettiſworth's caſe, 33 Eliz. in C. B. Co. 2 l. f. 31. & ſee Herne's Law of Conv. *ubi ſupra*, & p. 36.

If a man let Lands or Tenements by Deed or without deed for

Lit. l. 1. c. 7. Vide Philipps Pr. of Law, p. 94.

for Term of Years, the Remainder over to another for Life, in Tail or in Fee; in this case Livery of Seisin must be given by the Lessor to the Lessee for Years, otherwise nothing passeth to them in Remainder: the Reasons you have before in this Chapter.

Co. 1 part Inst. f. 49. b.

If the Lessee enter before Livery and enjoy, then the Free-hold and the Reversion are still in the Lessor, and he cannot then make Livery to the Lessee after Entry; for he is then in possession, and Livery cannot be made to one in possession.

Co. 1 part Inst. f. 46. a. & Rastall's Recoveries 2. f. 371. a. Wingate's Abr. Stat. p. 405.

The Statute of the 21 of *H.* 8. *cap.* 15. gives liberty and power to falsify all Recoveries that shall be had against the Tenant of the Free-hold through the knavery of the Lessors, intending thereby that the Lessees shall be outed before their Term

Term be out; whenas perhaps they pay'd a great Fine at their Income, and ſo it were an hard caſe if they ſhould loſe their Terms upon ſuch Recoveries by Colluſion.

CHAP. IV.

Of the Dates, Commencements, Continuance, and Determinations of Leaſes.

LEaſes for Life or Years are of Three natures. Some be good in Law; ſome voidable by Entry; and ſome void without Entry; ſome *in futuro*, and ſome *in præſenti*: of all which you have ſeveral Examples in this little Treatiſe. Co. 1 part Inſt. f. 45. b.

If a Leaſe be made for 3 years beginning from henceforth, and is delivered the 19 See Clayton's caſe, 37 Eliz. in C. B. Cook 5 lib. f. 1. 12 Eliz. Dyer 286. 14 Eliz. Dyer 307. Co. 1 part Inſt. f. 46. b. Noye's Maximes, p. 66. But ſee Osborn and Rider's caſe, H. 13 Jac. in B. R. Cro. 2 part, 135. See Barwick's caſe, 39 El. in the Exchequer. Co. 5. l. fo. 93. Hern's Law of Conv. p. 14, & 15.

day

day of *June* 1663; in this case the day must be taken *inclusivè*, and the Lease must end the 18 day of *June* in the third year after. But if a Lease be made to hold from the day of the making, or from the day of the Date, or from the Date; here the Lease shall begin the day after it is delivered, and the day of the delivery is exclusive; and so note the diversity.

Co. 1 part Inst. ibid. Herne's Law of Conv. p. 15, & 131.

If the *Habendum* of a Lease be for the term of 21 years, without mentioning when it shall begin, it shall then begin from the Delivery.

Co. ibid. See Goddard's Case, 26 Eliz. Co. 2 l. t. 5. See M. 8 Jac. B. R. Osley & Sr Baptist Hicks's Case. Cro. 2 part 263, 264. there being pretty matter concerning the Date and Delivery of a Deed. Herne's Law of Conveyances, *ubi supra*, & pa. 132.

If an Indenture of Lease bear date the 30 *Febr.* or 40 of *March*, which is impossible; in this case if the term be limited to begin from the Date, it shall then begin from the Delivery, as if there had been no Date at all.

I

If Lands descend to an Heir, he may make a Lease thereof before his Entry into the same. Noye's Max. p. 67.

If a man make a Lease to one for 10 years, and the next day after make another for 20 years to another man; this second Lease shall be good for 10 years after the first is expired. ibid. p. 68. 26 H. 8. Bro. Lease 48.

If a Lease be made for 21 years, and after another Lease to commence from the end and expiration of the said term of years, and after the first Lease is surrendred; in this case the second Lease shall commence presently upon the Surrender: but if it had been to commence from the end of the said 21 years; there, though there had been a Surrender, yet it should not have commenced till the term had been out: and so note a diversity between *Terminum Annorum* and *Tempus Annorū*. Co. 1 part Inst. f. 45. b. & see 40 El. in the Rector of Chedlington's case. Co. 1 lib. f. 154. and Herne's Law of Convey. p. 135.

See the 39 El. in Barwick's case. Co. 5. l. f. 93.

A man cannot make a Leaſe for Life to commence at a day to come, for he cannot make a preſent Livery to a future Eſtate; and therefore in this caſe nothing doth paſs.

Co. 1 part Inſt. f. 45. b. See many prety caſes in the B. of Bathe & Wells's caſe, Co. 6. l. f. 34, 35.

If *A* ſeiſed of Lands in Fee do grant to *B*, that when he payes him 20 s. that then from that time he ſhall have and occupy the Land for 21 years, and after *B* paies the 20 s; this is a good Leaſe for 21 years from that time, notwithſtanding the Rule of *Bracton*, That every Leaſe muſt have a certain beginning and ending; *Quia id certum eſt, quod certum reddi poteſt.*

3. M. 1. Br. Leaſes 67. the end.

And ſo if a man leaſes Land to another till the Leſſee hath levied 20 pound; this is a good Leaſe, notwithſtanding the incertainty.

Co 1 part Inſt. f. 45 b. See Say & Fuller's caſe.

If a man make a Leaſe to another for ſo many years as *R. A.* ſhall

ſhall name, this at the beginning is incertain; but when *R. A.* hath named the years, it is then good for ſo many years as he names. Pl. Co. Kitchin, P. 235. b. Vide Phlipps's Pr. of Law, P. 36.

If *A* leaſeth his Lands to *B* for ſo many years as *B* hath in the Mannor of *Sale*, and *B* hath 10 years in it; this is a good Leaſe to *B* of the Lands of *A* for the ſaid ſaid 10 years. Co. 1 part Inſt. f. 45. b.

But if a Parſon make a Leaſe of his Glebe for ſo many years as he ſhall be Parſon there, this is void for the incertainty; for *Terminus vitæ eſt incertus, & licet nihil certius eſt morte, nil tamen incertius eſt horâ mortis.* Co. ibid. So reſolved Hil. 26 El. Rot. 935. in C. B. Brac. l. 2. c. 9.

If a Parſon make a Leaſe of his Glebe for 3 years, and ſo from 3 years to 3 years ſo long as he continues Parſon; this is a good Leaſe for 6 years, and void for the Remainder: but this muſt be underſtood, if he conti- Co. ibid.

nue Parſon ſo long.

See in the 40 El. in the Rector of Cheddington's ca. Co. 1. l.

If a Leaſe be made to one for ſo many years as his Executors ſhall name; this is void for the incertainty.

Noye's Max. p. 66.

A Leaſe for a year, and ſo from year to year during the Life of *R. A*, is a Leaſe but for 2 years; and if the Termor ſtay longer, he is afterwards but Tenant at Sufferance.

33 Aſſ. p. 2. 2 M. 1. Br. Leaſes 67. Co. 1 par. Inſt. f. 42. a.

If I make a Leaſe to *R. B.* to hold the Lands till 100 pound be paid, and make no Livery of Seiſin; he hath an Eſtate but onely at Will, and may be put out at pleaſure: but if Livery be given, he hath an Eſtate for Life, upon Condition implied, to ceaſe upon the payment of the 100 pound.

14 H. 8. 16. Noy's Max. p. 66. Br. Leaſe 13. 22.

A Leaſe from year to year ſo long as both parties pleaſe, is a good Leaſe after Entry in any year for that year, till warning be given to depart.

If

If a Leaſe be made to *A* and his Aſſigns for his Life and the Life of *B* and *C*; this is a good Leaſe for 3 Lives. See Roſſe's caſe, 41, 42 El. Co. 5. f. 13. Herne's Law of Conv. p. 12.

But if a Leaſe be made for an hundred years, if *A* and *B* live ſo long; in this caſe, if either of them die, the Leaſe is ended. See in Co. ſaid 5. Book, in Brudenel's ca. 34 El. in B. R. & ſee Brownl. 2 part, p. 292.

A Leaſe rendring Rent to one and his Heirs, or his Heirs alone, but of a Feoffment *Tenendum* to one or his Heirs, is but an Eſtate onely for the Life of the Feoffee. See Co. 5. l. f 111. in Mallery's ca. 43 Eliz. Herne's Law of Conv. p. 142.

If a man make a Leaſe to commence after the end or determination of a former Leaſe *in eſſe*, and after the firſt Leaſe is out, and the ſecond Leſſee entreth not, but he in the Reverſion enters, and makes a Feoffment, and levieth a Fine with Proclamations, and 5 years paſs without Entry or Claim of the ſecond Leſſee; in this caſe the Fine barrs him: for the Stat. See 3 Jac. Savin's ca. in C. B. Co. 5. l. f. 123.

4 *H.* 7. c. 24. ſpeaks of Intereſt, and a Leaſe for years is an Intereſt within the Statute.

Co. 1 part Inſt. f. 45. b. If an Infant, who is ſeiſed of Land held in Soccage, make a Leaſe at his age of 15; this is good, and ſhall bind him.

10 E. 3. 26. 34 Aſſ. 15. 23 E. 3. Dower 130. Co. 1 part Inſt. f. 46. a. If Tenant in Tail make a Leaſe for Years according to the Statute, rendring Rent, and die without Iſſue; now as to him in the Reverſion the Leaſe is void; but if he endow the Wife of that Land, it ſhall be good againſt her: or if Tenant in Tail die without Iſſue, his wife *enſeint* with a Son, and he in Reverſion enters, and after the Wife is delivered; in this caſe the Leaſe is again revived, although it were once void by the Entry of him in Reverſion. *Nota.*

Co. 1 part Inſt. f. 46. a. If Tenant in Fee take a Wife, and make a Leaſe for Years, and after die, and the Wife

Wife is thereof endowed; here ſhe ſhall avoid the Leaſe, but after her Death it ſhall be in force again againſt the Heir.

If an Husband have a term of years in Right of his Wife, if ſhe die, it remains to him; but if ſhe ſurvive him, it remains to her, and not to his Executors, without he make diſpoſition of it in his life-time. *14 El. Pl. Com. 419.* Idem ibid. b & fo. 351. a. Mich. 26, 27 El. adjudged in both Courts inter Amnor & Loddington. And ſee 7 Jac. in Manning's caſe. Co. 8. l. f. 94.

If a man leaſe for Life to *I.S.*, and the next day leaſes to *W.B.* for 20 years; the ſecond Leaſe is void, if it be not a Grant of a Reverſion with Attornment; for in Law the Free-hold is more worthy and perdurable then a Leaſe for Years: yet if the Leſſee for Life die within the Term, the Leaſe for Years is good for the reſt of the years to come. 37 H 8 Br. Leaſes 48. the end.

If a man licenſe another to enter and occupy his Lands, Brownl. 2 part, p. 250. 10 E. 4. f. 4. 5 H. 7. f. 1.

this is a good Leaſe for Years in Law.

Fl.Com.f.273.29 H. 8. Br. Leaſes 49.

If a man leaſe for 60 years, and ſo from 60 years to 60 years, until 200 years be ended; this is all the ſame Leaſe, and good for the term.

32 l.Aſſ.6.

If a man have a Leaſe for 500 years, it is but a Chattel, notwithſtanding the long time.

Hil. 23 Car. in B. R. Styles Regeſt. Practicale, p.197.

A Leaſe for Years, though it be never ſo long, cannot be Intailed, for the nature of a Chattel cannot be turned into an Inheritance.

Co. 1 part Inſt. f. 42.a. Vid. Fh lipps 11. of Law, p.88.

If a man ſeiſed of Land in Fee-ſimple make a Leaſe of the ſame to another, To have and to hold the ſame for term of Life, and do not mention whoſe Life; in this caſe it ſhall be taken to be for the Leſſee's Life; for the Act of every man ſhall be taken moſt ſtrongly againſt himſelf.

Co. ibid. & f.183. b. Finch, L. 1. c. 4. p. 60.

But if Tenant in Tail let ſuch

such a Leaſe without expreſſing whoſe Life, it ſhall be taken to be for the Life of the Leſſor.

A Leaſe for a thouſand daies is a Leaſe for Years. 14H.8.f.1.Finch, l.1.c.5.p.67.

A Leaſe for Years and a Releaſe amounteth to a Feoffment. Finch, cod. loco. Co.Lit.f. 207. a.

If Joynt-tenant make a Leaſe for years of his part, though the Leſſee never had poſſeſſion, or though it be to begin at a day to come, and the Joynt-tenant which made it die before the day; yet the Survivor ſhall be bound by the Leaſe, for the Leſſee hath a preſent Intereſt. Finch, l.1.c.3. p. 97.Mich.3 Eliz. Dyer,187.Lit l.3. c. 3. Co. 1 part Inſt. f 185. a. & 186. a.b. But ſee Dyer f.178. Harbin & Barton s caſe.Goldsb. p. 187. pl.130.

But it is otherwiſe of a Grant to have a Leaſe, if the Grantee pay 10 pound before *Midſummer* next, and the Joynt-tenant which made the Grant die before the day; for here is no Intereſt at all, but a Communication. Co. 1 part Inſt. f. 184.b.Finch,ibid. 5 El.Plo.203. Brownl. 1 l Com. 263.b. in Dame Hales caſe.

nication till the mony be paid.

Finch, l. 2. c. 3. p. 113. Litt.

If a man let Land for Life, without saying more, the Reversion of the Fee-simple is in the Lessor.

Idem ibid. Br. Forif. 96.

If Tenants for Life or Years of Land make a Feoffment in Fee, and give Livery, they forfeit their terms.

See Farrington's case. Dyer 67. & Cowell's Inst. p. 199.

If two take a Lease for their Lives, and make partition; either of them dying, his part immediately reverts to the Lessor.

See Sayer and Hardye's case. Goldsb. p. 179. pl. 112.

If a Lease be made to a Feme sole for 40 years, if she so long live sole and continue unmarried; now if she die, the Lease is determined: or if I make a Lease for 40 years, if the Lessee dwell upon the thing let during the term; here if the Lessee die, the term is determined.

Idem in Saye's & Hardye's case.

But if it be a Lease for 40 years, if the Lessee dwell upon the

the thing let during his Life; in this case if the Lessee dieth, the Lease continueth.

If there be two Joynt-tenants for Life, and the one make a Lease for 80 years, to begin after his death, and after dies; this is a good Lease against the Survivor. Harbin & Barton's case, 30 El. Goldsb. Rep. 187. pl. 130.

If a Lease be made to the Husband and Wife, yielding a greater Rent then the Land is worth; in this case if the Husband die, the Wife may refuse the occupation of the Land, and so be discharged of the Rent: but if the Husband overlive the Wife, and die, his Executors, if they have Assetts to pay the Rent to the end of the term, may not refuse the Lease; but if they have not Assetts, they may wave the occupation, and by special pleading discharge themselves. Brownloe's 2 part p. 206. the end. Dr. & Stud. l. 2. c. 33. f. 120. a. b. See Cowel's Inst. p. 193. Finch, l. 1. c. 3. p. 31. 4 E. 6. 68. b. See Co. 5. l. in Brudenel's case.

If a Lease be made to *A.* and

B.

B for their Lives, in this caſe if either die, the other ſhall have all during his life, for it is an Intereſt. *Philipps Pr. of Law*, 131.

Henſtead's caſe, 36,37 El. C.B.Co. 5. l. f.10. See M. 37 El. in C.B. rot. 1634.

If a Woman make a Leaſe at Will reſerving Rent, and after take Husband, yet the Leaſe at Will continues ſtill: and if a Feme ſole, who is Leſſee at Will, take Husband, yet the Leaſe at Will is ſtill good.

3 H.8. Vid. Keilwaye's Rep. f.162. & Terms of the Law, verb. *Countermand*.

Co. 1 part of Inſt. f.55.b.

If Husband and Wife make a Leaſe at Will of the Wives Lands, reſerving Rent, and the Husband dieth, yet the Leaſe at Will continueth: and ſo it is if two make a Leaſe at Will to two others, if either one of the Leſſors or Leſſees die, yet the Leaſe is good.

27 H.6.3. 22 E.4. 5. Co. 1 par. Inſt. f. 57.a. 12 E.4.12.

If Tenant at Will leaſe for Years in his own name, it is a Diſſeiſin, and the Leſſor may have Treſpaſs againſt the Grantee of the Leſſee at Will.

If

If a man leaſe to one at Will, and the Leſſor dies, the Will is gone. 21 H.6.f.42.Kitchin,237.a.

If I let Lands in which are Mines or Trees, I cannot enter to take the Trees or Mines, but am a Treſpaſſer, unleſs I reſerve ſuch a privilege to my ſelf when I let the Lands. 9 E.4. f.37. per Needham.

All Feoffments, Gifts, Grants and Leaſes made by Dureſs of Impriſonment are voidable, and that not onely by the parties themſelves, but by their Heirs, and by thoſe who have their Eſtates. Perkins 16. Co. on Lit f.253.b.14 Aſſ.pl.20.Plo.18.a. Vide Philipps, Principles of Law, p.4.

If the Leſſor come upon the ground leaſed, he is no Treſpaſſer, for it ſhall be intended that he came to ſee if Waſt were done. Finch,l.1.c.3.p. 57. Vid. Hunt & Downam's caſe, Paſc. 16 Jac. B.R. Cro. 2 part,478.

Although a Leſſee for Years do loſe his Indenture of Demiſe of the Lands let unto him, yet he ſhall not loſe his term in the Lands let by Indenture which Styles Regeſtum Practicale.p.198. Paſch. 1650. in B.R.

is loſt, if it can be proved any way that there was ſuch a term let to him by Indenture, and that it is not determined: and ſo it is of any other Eſtate in Land, if the Deed that created the Eſtate be loſt, if it can be ſufficiently proved that there was ſuch a Deed made, and that ſuch an Eſtate was conveyed by Deed.

If Tenant for term of years or any other Tenant be outed, or if they die, their Executors, or they if living, ſhall have reaſonable time and free liberty to come and fetch away their Utenſils and other goods out of the Leſſor's Houſe.

CHAP.

CHAP. V.

Of Corn ſown where the Tenant is outed, or the Term determines before it be ripe, who ſhall have it: and alſo of Eſtovers, and Trees blown down, &c.

IF Tenant at Will ſow the Land, he ſhall have free liberty to come and cut and carry away his Corn, although the Leſſor put him out before it be ripe. Fleta, l. 3. c. 13. Co. 1 part Inſt. f. 55. a. 11 H 4. f. 90. Vide Philipps Pr. of Law, p. 86.

But if Tenant for Years ſow the Land, and his term end before the Corn be ripe, the Leſſor ſhall have it, without it be covenanted between them, that he ſhall have his way-going Crop, as they call it in *Yorkſhire*: and the reaſon of this is, becauſe the Tenant did know Co. on Lit. f. 55. a. b. Lit. ch. *Tenant at Will.* See the Clerk of Aſſize, p. 60.

when

when his term would end, and it was his folly to ſow Corn that would not be ripe till the term were expired.

Co. *ubi ſuprá.* 18 E 4. 18. 10 Aſſ. pl. 6.

If Leſſee at Will ſet Roots, or ſow Hemp or Flax or any annual profit, if after they be planted the Leſſor out him, or if the Leſſor die, yet the Leſſee or his Executors ſhall have that year's Crop.

Co. *ubi ſuprá.* Temps E. 1. Br. 25.

But if he plant young Fruit-trees, or young Oaks, Aſhes, Elmes, &c. or ſow the ground with Acorns, if he be outed by the Leſſor, he ſhall have none of theſe, becauſe they yield not preſent annual profit.

Co. ibid. 7 Aſſ. 19.

Every Tenant that hath an Eſtate incertain ſhall have the Corn ſown by him, though he be ouſted before it be ripe.

Co. *ubi ſuprá.* 10 E. 3. 29. See in Sir Henry Knivet & Pool's caſe, Goldsborough's Rep. p. 143. pl. 60. & Co. 5. l. f. 85. See the Clerk of Aſſize, p. 60.

If Tenant for Life ſoweth the ground, and dy before the Corn be ripe, his Executors ſhall

ſhall have it, and Graſs, if it be cut; but not Meadow unmown, for that is part of the Inheritance till it be ſevered.

The like Law is of the Leſſee for Years of Tenant for Life. Co. on Lit. f. 55. b.

If a man be ſeiſed of Land in right of his Wife, and ſow the Land and die, his Executors ſhall have the Corn; but if they be Joynt-tenants of Lands, and the Husband ſoweth the ground and dieth, the Wife ſhal then have it. Co. ibid. 7 Aſſ. pl. 10. Perkins, 518. Swinburn's Wills, 3 part, ſect. 6. p. 163. Dyer, 316. 8 Aſſ. 21. Vide *Pacis Conſultum*, p. 83.

If *A* leaſe Land for the life of *B*, and ſow the Land, and before the Corn be ripe *B* dies, yet notwithſtanding *A* ſhall have the Corn, for his Eſtate was determined by the Act of God.

The ſame Law is of a Woman Tenant for Life or in Dower, who takes Husband, and he ſows the Land, and before Cowell's Inſt. p. 141. Fulb. par. f. 37. b. Perkins, 513. Swinburn *ubi ſupra*.

fore the Corn be ripe the Wife dies.

V. Oland's Case, 44 El. in B. R. Co. 5. l. f. 116. & Co. on Lit. f. 55. b. Vid. Goldsb. Re. p. 189. pl. 136. Hern's Law of Conv. p. 239.

But if a Woman who holds Lands *durante viduitate suâ* sow the ground, and then take Husband, here the Lessor shall have the Corn: and so if Tenant at Will sow the Land, and then will occupy the Land no longer, he shall lose the Corn: and the reason of this is, because that the determination of their Estates grew by their own Act.

Noye's Maximes, p. 70. Vid. Stat. 32 H. 8. ch. 28.

A Lease made by the Husband alone of the Wives Land is void after his death; but if the Lessee have sown the Land, he shall have the Corn.

Tr. 37 H. 6. 35. Perkins, 515. Cowel's Inst. p. 142.

If there be Land-lord and Tenant, and the Land is recovered by a Title paramount against the Land-lord; in this case if the Tenant have sown the Land, he that recovered shall have the Corn, if it be not

not ſevered before Judgment.

Note that to every Tenant for Life or Years the Law, as incident to his Eſtate, giveth him, without proviſion of the party, three kind of Eſtovers; that is *Houſebote*, which is two-fold, viz. *Eſtoverium ædificandi & ardendi*, that is, for repairing the Houſes and burning; then *Ploughbote*, that is to ſay *Eſtoverium arandi*, that is, for mending his Ploughs, Harrows, Wains, and making Rakes and Forks for getting his Hay; and laſtly *Haybote*, and that is *Eſtoverium claudendi*, and this is for repairing and mending his Stack-bars, Gates, Stiles and Hedges: but theſe Eſtovers muſt be reaſonable. *Bote* in the *Saxon* tongue and *Eſtovers* in the *French* tongue in this caſe are all of one ſignification, that is, to have Compenſation or ſatisfaction

Brac. l. 4. f. 222, 231, 232. Fleta, l. 4. c. 19, 25, 26, 27. F. N. B. 180. 21 H. 6. 46. 10 E. 4. 3. Vide Lutterel's caſe, 43 El. in B. R. Co. 4. l. f. 86, 87. Terms of the Law, verb. *Haybote*, & verb. *Firebote*, and *Houſebote*. Philips Pr. of Law, p. 65.

on for these purposes.

Co. on Lit. f. 41. b. These Estovers the Lessee may take without the Assignment of the Lessor, unless the Lessee be restrained by special Covenant, for *Modus & conventio vincunt legem.*

Finch, l. 1. c 3. p. 15. 12 El. 381. 5 H. 7. 1. 7. gr. 58. P. 26 H. 8. 4. Perkins, 104. Kitchin, f. 51. a. Estovers granted to be burnt in such an House, shall go to him that hath the House by whatsoever Title; for one is inseparably incident to the other.

Vide Co. 4. l. 31 El. in B. R. in Harlackenden's case there; & Co. 11. l. in Lewis Bowles's case, 13 Jac. If Tenant for Life or Years cut down Trees, or pull down Houses, or suffer them to fall, the Lessor shall have the Trees and Timber of the said Houses, for the Lessee had them onely as things annexed to the Land, and he shall not have a greater Interest in them by this tortious Severance.

Vide Co. *ubi supra*, & 16 El. Dyer 332. F. N. B. 59 M. 20 E. 3. Waste 32. If Timber-Trees be blown down by the wind, the Lessor shall have them, for they are par-

parcel of the Inheritance, and not the Tenant for Life or Years, unleſs it be to build withall, where Houſes are in decay: but if they be Dotards without any Timber in them, then the Tenant ſhall have ſuch when they are blown down.

Leſſee for Years or for Life, Tenant in Dower or by the Courteſie, have onely a ſpecial Intereſt or property in the Trees, as a thing annexed to the Land ſo long as they are annexed thereunto; but if they or any other ſever the Trees from the Land, then their Intereſt is determined, and the Leſſor may take the Trees as things that are parcel of his Inheritance, the Intereſt of the Leſſee being determined.

Co. *ubi ſuprd.* Noye's Max. P. 68.

CHAP.

CHAP. VI.

Of Diſtreſſes. Of what things a Diſtreſs may be taken, and how it muſt be uſed, &c.

Co. on Lit. f. 96. a. THE word *Diſtreſs* is a *French* word, and in *Latine* it is called *Diſtrictio ſive Anguſtia*, becauſe the Cattel diſtrained are put into a Streight, which we call a Pound.

14 H. 8. 25. 2 E. 2. Tit. *Diſtreſs*. 6 R. 2. Reſcous 11. Co. ibid. f. 47. a. Dr. & Stud. l. 1. c. 5. A Diſtreſs muſt be of a thing whereof a valuable property is in ſome body; and therefore Dogs, Bucks, Does, Conies, and the like that are *feræ naturæ*, cannot be diſtrained, nor an Horſe when a man or woman is riding on him, nor an Ax in a man's hand cutting of wood, for they are for that time privileged.

22 E. 4. 36. 7 H. 7. 1. b. 22 E. 4. 49. b. Neither can things which are for

for the maintenance and benefit of Trades be diſtrained for Rent; as an Horſe in a Smith's Shop, nor an Horſe in an Inne, for the Rent thereof, nor the Materials in a Weaver's Shop for making of Cloth, nor Cloth or Garments in a Tailor's Shop, nor Sacks of Corn or Meal in a Mill, for the Rent of the Mill, nor any thing that the Leſſee hath diſtrained for dammage feaſant, for it is in the Cuſtody of the Law. Co. ibid. & Noye's Max. p. 43. Comp. Attorney, p. 124. Terms of the Law, verb. *Diſtreſs.*

A diſtreſs may not be taken of Oxen of the Plough; nor a Mil-ſtone, though it be raiſed up to be picked, ſo long as it lies upon the other Stone; nor Sheep, if there be a ſufficient Diſtreſs beſides; neither may a man ſever Horſes joyned together, or to a Cart. Co. on Lit. f. 47. a. 51 H. 3. Stat. de Diſtrictione Scacc. Bra. l. 4. f. 217. F. N. B. 90. a. Fleta, l. 2. c. 21. 14 H. 8. f. 29. Finch, l. 2. c. 6. p. 135.

Nothing ſhall be diſtrained of which the Sheriff cannot make a Replevin, or that cannot Co. ibid. 18 E. 3. 4. a. 11 H. 7. 14. a. 21 H. 7. 39. b. Terms of the Law, verb. *Diſtreſs.*

not be reſtored again in as good a plight as it was at the time of the Diſtreſs taken.

Co.ibid. 21 E.4. 50.b.2 H.4.15.& Finch, l.2.c.6. p. 135. Victuals nor Sheafs or Shocks of Corn cannot be diſtrained: but Chariots or Carts with Corn may either for Rent or for Dammage feaſant.

Co.ibid. No man may be diſtrained by the Utenſils or Inſtruments of his Trade, as the Ax of a Carpenter, or the Books of a Scholar.

Idem, f. 47.b. 20 H.7.f.13.3 E. 3. 21H.7.26 Aſſ.49. 9.Finch, *ubi ſuprá*. Compleat Att.p.124. Neither can Furnaces, Caldrons or the like fixed to the Free-hold, nor Fats fixed for a Dier's pan, although the Leſſee may remove them during the term, nor the Windows or Doors of the Houſe whileſt they are on the Hinges, &c. be diſtrained.

Finch, *ubi ſuprá*. But if they be removed from off the Hinges, they may be diſtrained.

21 H.7.26. Kitchin, 63.a. The Lord cannot diſtrain Ta-

Tables dormant in the Houſe of his Tenant, nor any thing which cannot be attached in an Aſſize.

A man may diſtrain the Beaſts of a Stranger that come by Eſcape for Rent, though they have not been Levant and Couchant on the ground, ſaith my Lord *Cook*. Co. 1 par. Inſt. f. 47. b. 7 H. 7. 1 b. 10 H. 7. 21.

The Lord may ſell a Diſtreſs taken for an Amercement in a Court-Leet, as the King may ſell the Diſtreſs, becauſe it is a Court of the King's. 3 H. 7. f. 4. Kitchin, f. 61 b. Vide Gomorſall and Wayt's caſe, M. 8 Jac. in B. R. Cro. 2 part, 255.

The Lord cannot diſtrain another man's Horſe in the houſe of one amerced, nor the Robe of another in a Taylor's Shop, where the Taylor is amerced. 10 H. 7. f. 21. Kitchin, f. 62. a.

If a man diſtrain goods or Chattells, he may put them where he will, either in Pound covert or overt: but if they take any harm, he Finch, l. 2. c. 6. p. 137. 9 E. 4. f. 2. b. Kitchin, f. 207. b.

must answer for them.

Co. 1 part Inst. f.47.b.Dr.&Stud. l.2.c.27. Compl. Attorney, p.125. Fleta,l.2.c.20. F. N.B.89.Terms of the Law,verb. *Distress.*

But if they be living Cattell they ought to be put in a common Pound,or else in some open place, as in his own Close, or anothers by his consent, so that the Owner may come lawfully to feed them; and notice must be given to the Owner where they are, if they be not in a common Pound; and then if they die, it is in the Owner's Default:but if they be in a Pound covert,or out of the County, and die for want of meat, then he that distrained shall answer for them.

20 H.7. f.39.Kitchin,f. 207.a.

Cattel taken Dammage-feasant may be impounded in the same ground where they are Dammage-feasant; but goods or Cattel taken for other things may not.

Co. 1 par. Inst. f. 47.b. Marlbridg, c.4.West.1.c.16.2,3 P.& M.c.12. Vide Berdsley & Pilkinton's ca. Goldsb.Rep.p.100.pl.5.&p.145.pl.62.Partridge & Naylor's ca.See Mich. 24 El.in C.B. Godbolt's Rep. 11. Rastall Tit Distresses 11. Wingate's Abr.p.133.

No man may drive a Distress out

out of the County where it is taken, nor out of the Hundred, but to a Pound overt within 3. miles; neither may a Diſtreſs be impounded in ſeveral places, nor above 4 pence taken for the Fees of impounding one whole Diſtreſs, on pain of 5 pound.

If a man diſtrain Beaſts Damage-feaſant, and put them in the Pound overt within the ſame County not above 3 miles out of the Hundred, and the Owner ſuffers the Beaſts to die for lack of meat; then he that diſtrained them is at his liberty to take his Action of Treſpaſs. Dr. & Stud. l. 2. c. 27.

If the Owner of the Cattel tender amends to him that diſtrained, and he refuſe it, yet the Owner may not take his Cattel out of the Pound; for if he do, a *Parco fracto* lieth againſt him. Idem ibid. & Kitchin, f. 207. b.

But after ſuch tender he may Idem ibid.

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But after ſuch tender he may Idem ibid.

sue out a Replevin, to have them out; and if it appear, when they come to a Trial, to the Jury that the Tender was sufficient, then the Owner shall recover Dammages in the Replevin against him that distrained, for detaining the goods; and if on the contrary it appear that the Tender was not sufficient, then the Avowant, that is he that distrained, shall have such Amends as the Jury shall assess.

Dr. & Stud. l. 2. c. 27. Kitchin f. 207. b.

If after such Amends tendered the Cattel die in such Pound overt, the Owner shall be at the loss, by reason of the wrong done at the beginning, to see that they shall have meat so long as they be in Pound.

Idem ibid.

But if the Owner of the Cattel procure a Replevin to deliver them, and he that distrained resists it, and will not deliver

deliver them; in this case, if they die after for want of meat, it is at the peril of him that distrained, and the owner shall recover Dammages against him in an action upon the Statute, for disobeying of the King's Writ.

If I send my Servant to take a Distress for a Rent or Service, who puts it in the Pound, if the Owner of the Beasts or a Stranger take them out, I shall have a *Parco fracto*; for it is my Pound, and not my Servant's. Compleat Attorny, p. 193. 21 E. 4. f. 19. Kitchin, f. 208. b.

If I impound Cattel taken upon a Distress in a friend's Close with his licence, and the Owner of the Cattel take them out; in this case I shall have a *Parco fracto*, and my friend an Action of Trespass for breaking his Close. Idem ibidem. F. N. B. 100. Finch, L. 4. c. 16. p. 310.

CHAP. VII.

Who may take a Diſtreſs, and for what cauſe, and when, and where.

Co. 1 part Inſt. 204. b. 205. a. 30 Aſſ. pl. 8 17 E. 3. 7 Co. lib. 4. f. 73. Philipps pr. of Law, p. 26. Dr. & Stud. l. 2. c. 9.

A Man may diſtrain of common right for Rent-ſervice, Homage, Fealty, Eſcuage, Suit of Court, &c. or for a Rent reſerved upon a Gift in Tail, Leaſe for Life, Years, or at Will, though there be no clauſe of Diſtreſs in the Leaſe.

Dr. & Stud. ib.

But for Debt, Accompt, Treſpaſs, Reparations, &c. a man may not diſtrain.

20 E. 3. Avowry 131. 25 H. 6. 37. Brict. fo. 230. & 238. Co. 1 part Inſt. f. 96. a Brit. f. 100.

It is a Maxime in Law, that no Diſtreſs can be taken for any Services that are not put into certainty, nor can be reduced to any certainty; for *id certum eſt quod certum reddi poteſt*, for *oportet quòd certa res deducatur in Judicium*: and upon the

the Avowry Dammages cannot be recovered for that which neither hath certainty nor can be reduced to certainty.

And yet in some cases there may be a certainty in an incertainty: as a man may hold of his Lord to shear all his Sheep depasturing within the Lord's Mannor; and this is certain enough, although the Lord hath sometimes a greater number and sometimes a lesser number there; for this incertainty being reduced to the Mannor, which is certain, the Lord may distrain for this incertainty: *& sic de similibus.* 7 E. 3. 38. & Co. *ubi supra.*

A Distress is inseparably incident to every Service that may be reduced to certainty, as aforesaid. Co. 1 part Inst. f. 150. b. 151. b.

A man may not distrain for Rent after the Lease is ended, nor out of his Fee, except in some special cases, nor in the 10 E. 3 Avowry 137. 11 H. 7. 5. Co. on Lit. f. 47. b. & 142. a.

Night, unless it be Dammage-feasant.

Noye's Max. p. 45. Vide Raffal Tit. Rents. 32 H. 8. 37. c. Wingate's Abridgment of the Stat. p. 407. & 408. Co. on Lit. f. 152. a. & Co. 4. l. f. 49. in Ognell's case, 29 El.

The Executors or Administrators of him which had Fee-farm in Fee, in Fee-Tail, or for Life, may either have an Action of Debt against the Tenant that should pay it, or distrain for it: and so may the Husband after the death of his Wife, his Executors or Administrators, and he which hath Rent for another's Life for the Arrearages after his Death.

Noye's Maximes, p. 43.

If a man put Cattel into my Pasture for a week, and afterwards I give him notice that I will keep them no longer, and he will not fetch them away; I then may distrain them Dammage-feasant.

2 E. 3. Rescous 12. Co. 1 part of Inst. f. 161. a. Compl. Att. p. 196.

If a man take Cattel Dammage-feasant, and as he is driving them to the Pound, they run into the Owner's house, who refuses to let them out again,

again; here he that diſtrains may have a Writ of Reſcous againſt the Owner for ſo doing.

If the Lord come to diſtrain, and ſee the Cattel, and the Leſſee or his Servants drive the Beaſts out of his Fee; here the Lord cannot have Reſcous, becauſe he had not the poſſeſſion, but he may follow and diſtrain them in another's ground, but not for Dammage-feaſant, for they muſt be Dammage-feaſant at the time of the taking. Noye's Max. p. 46. Co. 1 par. Inſt. f. 161. a. 6 R. 2. Reſ. 11. 11 H. 7. 4. 21 H. 7. 40. Co. 9. l. f. 22 in caſe de Avowry, & Terms of the Law, verb. *Diſtreſs* 44 E. 3. f. 20. & F. N. B. 102.

If a man take a Diſtreſs of goods, and ſhews no cauſe for what, if they be put in an houſe, the Owner may break the houſe and take them out. Clayton's Rep. p. 64. pl. 111.

If a Diſtreſs be taken of goods without cauſe, the Owner may Reſcue; but if they be impounded, he cannot break the Pound and take them out, becauſe they are then in the Cuſtody of the Law. 4 E. 6. Tit. *Diſtreſs*. 74. F. N. B. 100. E. Co on Lit. f. 47. b. 9 E. 3. f. 35. 5 E. 4. f. 7. per Danby. 40 E. 3. f. 33.

Co. *ubi supra*, 3 E. 3 Tit. Tranſ. 11, & 34 H. 6. 18.

If a man diſtrain Cattel for Dammage-feaſant, and put them in the Pound, and the Owner that had Common there maketh freſh Suit, and finds the Door unlocked; he may then take them out: but if it be locked, he cannot juſtifie to take them out.

Dr. & Stud. l. 1. c. 16 Cowell's Inſt. p. 231.

If Beaſts driven by the High-way eſcape into another man's Corn, he that driveth them is no Treſpaſſer by his Entry to fetch them out again.

Dr. & Stud. l. 2. c. 9.

If a man make a Feoffment reſerving a Rent, he cannot diſtrain without a Clauſe of Diſtreſs; and if the Feoffment be not by Indenture, the Reſervation is void in Law: like Law where a particular Eſtate is made reſerving a Rent, the Remainder over in Fee.

Dr. & Stud. ibid.

If Tenant for Life grant his whole Eſtate reſerving a Rent, the Reſervation is void, if it be not

not by Deed Indented, and without a Clause of Distress it is a Rent-seck, and he cannot distrain.

For an Amercement in a Leet the Lord may distrain, and though the Distress be taken in the High-way, yet in this case it is lawful. Dr. & Stud. ibid. 10 H. 7. f. 15. 34 E. 2. and 19 E. 2. Avowry 221.

A man cannot distrain for an Amercement in a Court Baron, nor for an Amercement in the Leet in a place seised into the King's hands for the King's Debt, for it is for that time privileged. Dr. & Stud. ibid. 47 E. 3. f. 12. Vide Kitchin, f. 61. b. Hughes's gr. Abr. 1 part, p. 721. Co. 10.

If a Lease be made at *Michaelmas* for a year, rendring Rent at the *Annunciation* and *Michaelmas*, the Lessor may distrain at the *Annunciation*, but not at *Michaelmas*, because the term is expired. Dr. & Stud. ibid. & Vide Co. on Lit. fo. 47. b.

If Tenant for another's Life make a Lease for Years reserving Rent, and *Cestui que vie* Dr. & Stud. ibid. Vide Perkins, 691, 692.

dieth;

dieth; in this case Tenant *per autre vie* cannot distrain, because his Reversion is determined.

Dr. & Stud. l. 2. c. 9. If a Town be Amerced, and the Neighbours by assent assess a certain Summ upon every Inhabitant, and it is agreed, that if it be not pay'd by such a day, certain persons thereto appointed shall distrain; such Distress is lawful.

Dr. & Stud. ibid. 12 E. 4. 11. 9 E. 3. 1. Vide Lit. Cha. of Rents & fee 44 E. 3. Horsdefon Fee 20. and Perkins, 115. Lord and Tenant by Fealty and Rent, the Lord grants the Fealty reserving the Rent, and the Tenant attorns; the Lord cannot now distrain for the Rent, for it is now made Seck;

Dr. & Stud. ibid. But if a man make a Gift in Tail reserving Fealty and Rent, and after grants the Fealty reserving the Rent and Reversion; here he may distrain for the Rent, for the Fealty is incident to the Reversion, and cannot be granted without it.

For

For Herriot-Service the Lord may diſtrain, but for Herriot-Cuſtome he muſt ſeiſe, and not diſtrain.

For Rent granted upon Egalty of partition or of Dower, the party may diſtrain. 21 H.6.7. & Dr. & Stud. ibid.

If a man break the Pound, and take out his goods, he that diſtrained may have a *Parco fracto* againſt him, and may alſo take the goods again whereſoever he finds them, and put them in the Pound again. 34 H.6.18. Co. 1 part Inſt. f.47. b. Vid. Comp. Att. p.192.

If the Tenant foreſtall the way with force and armes, and threaten in ſuch manner that the Lord dares not come to diſtrain or demand the Rent, or if there be no Diſtreſs on the ground, nor none ready to pay the Rent, then in this caſe the Lord may have a Writ of *Novel Diſſeiſin* againſt the Tenant, and recover his Rent and Arrearages: and if the Rent be behind another time, Co. on Lit. f.153. b. & f.161. b. Fleta, l.1. c.42. Vide 29. Aſſ.49. Noye's Max. p. 46.

time, he may have a Rediſſeiſin, and recover double Damages.

M. 7 Jac. in C. B. More and Conham's caſe. Owen's Rep. f. 123. Vide in Bagſhaw and Goward's caſe, Hil. 3 Jac. in B. R. Rot. 1070. Cro. Rep. 2 part, fo. 147.

If a man take a Diſtreſs he may not work it, for he hath neither property nor poſſeſſion *in Fure.*

CHAP. VIII.

Of Reſcous, where it ſhall be lawful.

Co. 1 part Inſt. f. 160. b.

Reſcous is an old *French* word coming from *Reſcourrer (id eſt) Recuperare*, that is, to take from, or reſcue, or recover; and is a taking away or ſetting at liberty againſt Law a Diſtreſs taken, or a perſon arreſted by the Proceſs or Courſe of Law.

Co. ibid. F. N. B. 101. c. & 102. f.

And all is one as to the point of

of the Disseisin, to rescue the Distress after it is taken, or before-hand to resist and withstand the taking of it; but yet it is no Rescous until it be distrained. Keilway 20. 6H.6.Disseisi.9. 21 H. 7. 40. a. Finch, l.4.c.16. & p.310.

If the Lord distrain when there is no Rent arrear, the Tenant may make Rescous and hinder. See in Bevil's ca. Co.4.l.f.11. 61 R. 2. Rescous 10.

Or if the Lord come to distrain, and the Tenant tender the Rent to him, and yet notwithstandiug the Lord will distrain, then the Tenant may make Rescous. 7 E. 4.24. & Co. 1 part Inst.f.160. b.

If the Rent be behind, and the Lord distrain the Cattel of the Tenant in the High-way within his Fee, the Tenant may make Rescous; for no man may distrain in the High-way, except the King and his Officers having special Authority. Co. ibid. 17 E. 3. 43. Vide Marlbr. ca.15. 52 H.3. Wingate's Abr. Star.p.132. See Rastall Tit. Distresses 5. Ferrer's *Magn. Charta*, f. 25. b.

If the Lord will distrain *Averia Carucæ*, goods of the Plough, Co. on Lit. f.161.a.

Plough, where there is a sufficient Distress to be taken besides, or if the Lord distrain any thing that is not distrainable either by the Common Law or by any Statute, the Tenant may make Rescous.

Rastall Tit. Distresses 10. & see Wingate's Abr. Sta. p. 132. Ferrer's *Mag. Charta*, f. 122. b.

If the Lord distrain out of his Fee in Lands not holden of him, the Tenant may make Rescous, unless it be in some special cases. See after in Ch. 10.

Co. 1 part Inst. f. 161. a.

If the Lord come to distrain Cattel which he seeth then within his Fee, and the Tenant, or any other, to prevent the Lord to distrain, drive the Cattel out of the Fee of the Lord into some other place, yet may the Lord freshly follow, and distrain the Cattel, and the Tenant cannot make Rescous; for in judgment of Law the Distress is taken within his Fee, and so shall the Writ of Rescous suppose.

Co. ibid. Comp. Att. p. 196. Co. 9. l. f. 22. in the case of Avowry. 6 R. 2. Resc. 11. 44 E. 3. 20. Hughes's gr. Ab. 1 part, p. 717. c. 21. F. N. B. 102. g. 21 H. 7. f. 40. Kitchin, f. 52. b.

But

But if the Lord coming to distrain had no view of the Cattel within his Fee, though the Tenant drive them off purposely, or if the Cattel of themselves after the view go out of the Fee, or if the Tenant after the view removeth them for any other cause then to prevent the Lord of his Distress; then cannot the Lord distrain them out of his Fee, for if he do, the Tenant may Rescue.

Co. 1 part Inst. f. 161. a. & Compl. Att. p. 196. Vide Hughes's gr. Ab. 1part, p. 717. c. 21.

If a man come to distrain for Dammage-feasant, and see the Beasts in his Soil, and the Owner chases them out of purpose before the Distress taken, the Owner of the Soil cannot follow and take them; for if he do, the Owner of the Cattel may rescue them: for they must be Dammage-feasant at the time of the Distress taken, and the Owner of the Soil is left to his Action of Trespass.

Co. 1 part Inst. f. 161. a. 16 E. 4. 10. 2 E 2. Avowry 182. Co. 9. l. f. 22. in Case de Avowry. Noye's Max p. 46.

If

Co. *ubi suprd.* 10 E. 3. 9. 49 E. 3. 14. 7 E. 3. 3. 11 H. 7. 28. 8 Ass. 18. 10 E. 4. 2.

If the Tenant lock up his Gates, and incloſe his grounds, ſo that the Lord cannot come to diſtrain, this is a Diſſeiſin, if the Lord have had actual poſſeſſion and the Rent is behind; for the Lord cannot break open the Incloſures to take a Diſtreſs.

CHAP. IX.

Of Replevins, when and where to be ſued out.

Co. 1 part Inſt. f. 145. b.

Replegiare is compounded of *Re* and *Plegiare*, as much as to ſay to deliver upon Pledges or Sureties.

Co. ibid. Vide Fleta, l. 2. c. 40. & Glanvill, l. 12. c. 12.

Where goods are diſtrained and impounded, the Owner of the goods may have a Writ *De Replegiari facias*, whereby the Sheriff is commanded, taking Pledges of proſecuting, to re-de-

re.deliver the goods distrain'd to the Owner; and this is by the Common Law.

But the quickest way is to complain to some of the Sheriffs Deputies in the Country, who keep a Seal for that purpose, and they will grant a Replevin, and must take *Plegii de Retorno habendo*, that is to deliver the goods again to the party that distrained, if the action be found against him that Replevieth; and this is by the Statute.

Co. *ubi supra.* Westmin. 2. c. 2. Vide Ferrer's *Mag. Charta*, f. 60. Rastal Tit. Replevin 2. & Wingate's Abr. Stat. p. 409. Compl. Att. p. 127.

By the Stat. 1, 2 *P. M.* c. 12. every Sheriff is at his first County-day, or within two Months after he receives his Patent, to depute and proclaim in his Shire-Town 4 Deputies to make Replevins, not dwelling above 12 Miles distant one from another; if he fails herein, he forfeits 5 pound every Moneth they are wanting, to be divided between the King and the Prosecutor.

Wingate's Abr. p. 133. Rast. Tit. Distresses 11. Vide Sheppard's Survey of County Judicatures, p. 47

If

Compl. Att. p. 125, 126. Ferrer's *Magna Charta*, f. 37. Weſtm. 1. c. 17. Vide Raſtall Tit. Diſtreſſes 7. & Wingate's Abr. p. 133. Terms of the Law, verb. *Diſtreſs*. Vide Sheppard's Sur. of County Judicatures. p. 49.

If the Lord carry the Diſtreſs to a Hold or out of the County, ſo that the Sheriff cannot make Deliverance upon the Replevin, then the party upon the Sheriff's return of the Replevin may have a Writ of *Withernam* directed to the Sheriff, to take as many of the Lord's Beaſts or as much goods in his keeping till he have made deliverance of the firſt Diſtreſs; and if the Beaſts or goods be conveyed to a Fort or Caſtle, the Sheriff may take with him the Power of the County, and beat down the Caſtle.

Comp. Att. p. 127. Vide Marlb. c. 21. Ferrer's *Magna Charta*, f. 27. & Raſtall Repl. 1.

If it be in a Franchiſe or Bailiwick, the party ſhall have a Replevin of the Sheriff, directed to the Bailiff, to deliver them upon Pledges as before.

3 E. 3. 74. 6 H. 4. 2. & 39. 9 H. 6. 39. 20 H. 6. 19. 30 E. 3. 22. 31 E. 3. Repl. 35. Co. 1 part Inſt. f. 145. b.

It is a general Rule, that the Plaintiff in the Replevin muſt have the property of the goods in him at the time of the taking, for

for if the Defendant (that is he that diſtrained) claim propeſty, the Sheriff cannot grant a Replevin upon Complaint to him made; for it is a Rule in Law, that Property muſt be tried by Writ.

And therefore in this caſe the Plaintiff (that is he that ſues out the Replevin) may have a Writ *De proprietate probanda* directed to the Sheriff, to try the Property; and if it be found for the Plaintiff, then the Sheriff to make Deliverance, and if for the Defendant, the Sheriff can proceed no farther; unleſs the Plaintiff get a *Replegiari facias* to the Sheriff; and then, though he return the property, &c. yet it ſhall proceed in the Common Pleas, where the property ſhall be put in iſſue, and finally tried.

31 H. 6. *Prop. probanda* 5. 1 E. 4. 9. 21 E. 4. 64, & 66. 2 El. Dyer 173. Co. 1 part Inſt. f. 145. b. Vide Shepard's Surv. of County Judic. p. 50, 51, & 52.

The Sheriff may take a Plaint upon the Stat. *Marlebr.* out of his County, and make Replevin

Co. *ubi ſupra.*

vin presently; for it should be inconvenient for the Owner to forbear his Cattel till the County-day.

If he that distrained the Beasts see cause, he may have a Writ of *Recordare*, and so remove the Suit upon the Replevin out of the Sheriff's County-Court into the Comon-Pleas-Court; and if the Plaintiff declare not, he that distrained may have a *Retorno habendo*; and if he declare not still, then the Avowant shall have a Writ to enquire of Dammages.

Co. 1 part Inst. f. 145. b. 42 E. 3. 18. 11 H. 4. 17. 7 H. 4. 17. 48 E. 3. 20. Vide Sheppard's Survey of County Judicatures, p. 46.

Note, there be two kinds of Properties; a general property, which every absolute Owner hath, and a special property, as goods pledged, or taken to manure his Lands, or the like: and of both these a Replevin doth lie.

5 E. 3. 38. 11 H. 4. 4. 17 E. 2 *Prop. prob.* 6. Co. 1 part

It is to be noted, that a man cannot claim property by his Bai-

Bailiff or Servant; and the Reason is, for that if the Claim fall out to be falſe, he ſhall be puniſhed for his contempt, which the Lord cannot be, unleſs he make Claim himſelf; for *Nemo punitur pro alieno Delicto.*

Inſt. f. 145. b. Philipps Prin. of Law, p. 69. Vide Sheppard's Survey of County Judicatures, p. 52 & 53.

If a man by his Deed grant a Rent with Clauſe of Diſtreſs, and grant farther that he ſhall keep the goods diſtrained againſt Gages and Pledges until the Rent be pay'd, yet ſhall the Sheriff Replevie the goods diſtrained; for it is againſt the nature of ſuch a Diſtreſs to be Irrepleviable, and by ſuch an Intention the Current of Replevins ſhould be overthrown, to the hindrance of the Commonwealth.

Co. *ubi ſupra.* Braſt. l. 4. f. 233. a b. 31 E. 3. Gage Deliver. 5.

If the Beaſts of divers ſeveral men be diſtrained, they cannot join in a Replevin, but every one muſt have a ſeveral Replevin; for in a Replevin it is a good

Co. 1 part Inſt. f. 145. b. 28 E. 3. 92. 3 H. 4. 12. 34 H. 6. 37. Sheppard's Sur. of County Judicatures, p. 46 47, & 52.

a good Plea to say that the property is to the Plaintiff and to a Stranger, and where there be two Plaintiffs, that the property is to one of them.

F.N.B.69.b.4 H. 7.40.11 H. 7. 10. Compl. Att. p.131. & Phipps Pr. of Law, p. 143. Finch, l.1. c.3. p. 46.

The Tenant shall have a Replevin against the Lord that did wrongfully distrain, though the Beasts be come back again to the Owner, because he can have no Action of Trespass against the Lord.

Tr. 23 Car. in B.R. Regest-Practicale, p.193.

A Replevin ought to be certain in setting forth the number and kindes of the Cattel distrained, or else it is not good.

CHAP.

CHAP. X.

Of Avowries, a word or two briefly concerning the same.

A Vowry is where one taketh a Diſtreſs for Rent or other thing, and the Owner of the goods ſueth out a Replevin, then he that taketh the Diſtreſs ſhall juſtifie in his Plea for what cauſe he took it; and if he took it in his own Right, he muſt ſhew that, and ſo avow the taking, and that is called his Avowrie. Terms of the Law, verb. *Avowry.*

But if he took the Diſtreſs in or for the Right of another, then when he hath ſhewed the cauſe, he muſt make Conuſance of the taking, as Bailiff or Servant to him in whoſe Right he took it. Terms of the Law, verb. *Avowry.*

In Avowrie if the Plaintiff be Raſtall Tit. Avowry, and Wingate's Abr. p. 54.

Vide Tr. 15 Car. B. R. Tintnye & James's Case, in Winche's Rep. f. 30, & 31. & in Cro. 1 part, 358, & 385. the same case, where there is excellent matter about Avowries.

be Non-suit, or otherwise barred or overthrown, then the Avowants shall recover their Dammages and Costs against the said Plaintiffs, as the same Plaintiffs should have done or had if they had recovered in the Replevin or Second Deliverance found against the said Avowants.

Rastall and Wingate, *ubi supra.* Co. 1 part Inst. f. 269. b.

The Lord may avow the taking a Distress as in Lands holden of him within his Fee, without naming any person in certain; and this is by the Statute of the 21 *H.* 8. c. 19.

But by the Common Law they could not do this, but were forced to avow upon a person in certain, which proved often very prejudicial to the Lords; for by the secret Fines, Recoveries, Grants and Feoffments which the Tenants made purposely to defraud their Lords, they thereupon were put from the knowledg

ledg of their Tenants, upon whom by order of Law they ſhould make their Avowry, and ſo to prevent this Inconvenience the ſaid Statute was made.

But the Lord may avow ſtill by the Common Law if he will: and although he do avow by the Statute upon the Lands generally, as in Lands, &c. within his Fee or Seigniory, yet nevertheleſs he muſt alledg Seiſin by the hands of ſome particular Tenant in certain within 40 years.

Co. *ubi ſuprd.* Vide Mich. 6 Jac. Co. 8. l. Sir Will. Foſter's caſe. 32 H. 8. ch. 2. Raſtall Tit. Limitation 3. & Wingate's Abr. p. 295.

In an Avowrie made according to the Statute, every Plaintiff in the Replevin or Second Deliverance, be he Termor or other, may have every Anſwer to the Avowrie that is ſufficient, and alſo have Aid and every other Advantage in Law, Diſclaimer onely excepted: for diſclaim he cannot, becauſe the

Raſtall Tit. Avowry; & Wingate's Abr. p. 34.

Avowry is made upon no perſon certain.

Co. 9. Lin Caſe de Avowry, f. 22.

If the Lord come to diſtrain, and the Tenant chaſe his Beaſts which were within the Lord's view out of the Land holden, &c. yet if the Lord freſhly follow and take them, although it be out of his Fee and Seigniorie, he may by the Equity of the Statute avow the taking as in Lands holden of him within his Fee and Seigniory.

Co. 1 part Inſt. f. 269. b. & ſee Co. 3 l. f. 65, & 66. in Pennant's caſe.

If there be Lord and Tenant, and the Rent is behind for divers years, and the Tenant makes a Feoffment in Fee, if the Lord accept the Service or Rent of the Feoffee due in his time, he ſhall loſe the Arrearages due in the time of the Feoffor; for after ſuch acceptance he ſhall not avow upon the Feoffor, nor upon the Feoffee for the Arrearages in the time of the Feoffor: But if the Feoffor dieth, albeit the

the Lord accept the Rent or Service by the hands of the Feoffee due in his time, yet he ſhall not loſe the Arrearages; for now the Law compelleth him to avow upon the Feoffee, and that which the Law compelleth him unto ſhall not prejudice him.

There are four manner of Avowries.

1. Upon his very Tenant.

2. Upon his very Tenant by the manner, where the Tenant had but a particular Eſtate.

3. Upon his Tenant by the manner, where the Lord had but a particular Eſtate. And theſe 3 are by the Common Law.

4. Upon the matter in the Land as within his Fee; and this is by the Statute, and the ſafeſt way.

Vide Aiſcough's case 9 Jac. Co. 9. l.f. 135, & 136. 20 H. 6. 9. 26 H. 6. Avows. 17. 9 Eliz. Dyer 257. 20 E. 3. Avowry 131. 5 H. 7. 11.

CHAP. XI.

Of Waſte: What ſhall be Waſte in Houſes, Gardens, Woods, Paſtures, &c. and what not.

34 E. 3. Waſte 143. Vide 10 H. 7. f. 2. b. 12 H. 4. f. 4. Co. 1 part Inſt. f. 53. 2. Vide Herne's Law of Conv. p. 51.

IF Leſſee for Life, Years, in Dower, &c. pull or proſtrate down the Houſes, or ſuffer them to be uncovered, whereby the Sparrs or Rafters, Planchers or other Timber of the Houſes are rotten, this is Waſte.

Co. *ubi ſupra.* Herne's Law of Conv. *ubi ſupra.*

If the Houſe be uncovered when the Tenant cometh in, it is no Waſte in the Tenant, if he ſuffer the ſame to fall down.

40 Aſſ. pl. 22. 23 H. 6. 24. 29 E. 3. 33. Co. *ubi ſupra.* Compl. Ar. p. 166. Herne, *ubi ſupra.*

But although the Houſe be uncovered and ruinous at the time of the Tenant's coming in, ye if he pull it down, it is Waſte, unleſs he do build it again.

If

If Glaſs-windows (though glaſed by the Tenant himſelf) be broken down or carried away, it is Waſte; for the Glaſs is part of the Houſe. Vide Co. 4. l. f. 63. in Harlackenden's caſe. Swinburn's Wills 3 par. ſect. 6. f. 165. & Herne, *ubi ſupra*.

And ſo it is of Wainſcoat, whether it be fixed to the Walls or Poſts of the Houſe with great Nailes or little Nailes, Screws or Pins, it is all one, if it be fixed to the Free-hold once, it is Waſte to take it away again. Co. 1 part Inſt. f. 35. a. Vide Keilway, f. 88. & Harlackenden's caſe, *ubi ſupra*. 22 H. 6. 18. 22 E. 4. 18. Swinburn, *ubi ſupra*. Compl. Att. *ubi ſupra*.

The ſame Law of Benches, Doors, Windows, Furnaces and the like, annexed or fixed to the Houſe, either by him in the Reverſion or the Tenant. Co. 1 part Inſt. f. 53. a. 10 El Dyer 272. 42 E. 3. f. 6. Noye's Maximes, p. 39.

The Raſing of a new Frame of a Houſe which was never covered, is no Waſte. 40 Aſſ. pl. 22. Br. Waſte 117. Kitchin. f. 242. b.

The Houſe uncovered by ſudden Tempeſt or otherwiſe, it is no Waſte in the Tenant if he let it lie ſo, till the main 12 H. 4. f. 4. Kitchin, f. 241. b. Co. *ubi ſupra*. 19 E. 3. Waſt 30. Herne's Law of Convey. p. 52.

Timber be rotten; and then he ſhall be puniſhed in Waſte, for not repairing it in time.

Co. *ubi ſupra.* Vide in Co. 4. f. 63. Harlackenden's caſe. Dr. & St. l. 2. c. 4.

If the Houſe fall by ſudden Tempeſt, or be burnt by Lightning, or proſtrated by Enemies, or the like, without any Default of the Tenant, or was Ruinous at his coming in and fall down, this is no Waſte.

Co *ubi ſupra.* 43 E. 3. 6. 11 H. 4. 32. 22 H. 6. 18. Herne's Law of Conv. p. 52.

And the Tenant may build the ſame again with ſuch materials as remain, and with other Timber growing upon the ground, (which he may take) for his habitation; but he muſt not make the Houſe larger then it was, for if he do, he is puniſhable in Waſte.

Co. *ubi ſupra.* 44 E. 3. 21. 38 Aſſ. pl. 1. Com. Act. p. 166. Herne's Law of Conv. p. 51.

Though there be no Timber growing upon the ground, yet the Tenant at his peril muſt keep the Houſes from waſting.

Co. *ubi ſupra.* Kitchin, f. 242. a. 42 E. 3. 21. 12 H. 4. f. 6. 17 E. 2. Waſt 118.

If the Tenant build a new Houſe where none was before, it is Waſte; and if he ſuffer it to be

be wasted, it is a new Waste.

If the Tenant either doe or suffer Waste to be done in the Houses, yet if he repair them before any Action brought, he is clear; but he cannot plead *quòd non fecit vastum*, but the special matter. Co. 1 part Inst. f. 53. a. 40 E. 3. f. 6. 38 Ass. pl. 1. Vide Kitchin. f. 242. a. Herne's Law of Conv. p. 51, & 52.

The pulling down of a Stone-wall or Mud-wall of an House is Waste. Kitchin, *ubi supra.* 10 H. 7. f. 2. b. Com. Att. p. 166.

A Wall uncovered when the Tenant comes in, is no Waste if he suffer it to decay. Co. *ubi supra.*

If the Tenant of a Dove-house, Park, Warren, Vinary, Estangues, &c. do take so many, as such sufficient store be not left as he found when he entered, this is Waste; and to suffer the Pale to decay, whereby the Deer are dispersed, is Waste. Brit. f. 134. 5 R. 2. Waste 97. Pl. Com. 322. Hobart's Rep. f. 234. Co. *ubi supra.* Hern's Law of Conv. p. 52.

If the Tenant suffer the Houses to be wasted, and then fell Timber to repair them, F. N. B. 59. k. Kitchin, f. 242. b. Co. 1 part Inst. f. 53. b.

this is a double Waſte.

21 H.7. f.26. *per* King[mil.] If a Termor fix a Furnace, and not to the Walls nor Poſts of the Houſe, if he take it away within his term, it is no Waſte, for the Houſe is not impaired.

Kitchin *ubi ſupra.* If Tenant in Fee fix a Furnace or Fatt in the middle of the Houſe, the Heir ſhall have it, and not the Executors.

34 E.3. f.3. b. 11 H.4. f.21. If an Houſe fall by a great Wind or Tempeſt, the Leſſor ſhall have the Timber, for it is no Waſte, and the Leſſee is not bound to re-edifie it.

If the Tenant take away a Lead, or Fatts fixed to the Houſe, it is Waſte.

11 H.4. f.32. Kitchin, f.282. b. If a Stable be ruinous at the time of the Leaſe made and fall, the Tenant may cut down Trees to make a new one; but if there were none there before, it is Waſte if he cut Trees to build one.

The

The Tenant may cut Trees to amend the Houſe and make Reparations; but where it is in decay through his own Default, there if he cut Trees to repair it, it is Waſte. Kitchin *ubi ſuprá*. Fitz. 59. k.

It is to be obſerved, that there is Waſte, Deſtruction and Exile. Waſte properly is in Houſes, Gardens and Timber-Trees, (viz. Oak, Aſh and Elm, and theſe are Timber in all places) either by cutting of them down, or lopping and topping them, or doing any act whereby the Timber may decay. Co. 1 part Inſt. f. 53. a. Vid. Herne's Law of Convey. p. 52.

Alſo in Countries where Timber is ſcant, and Beeches or the like are converted to building for the habitation of man, or the like, they then are alſo accounted Timber, and cutting of them by the Tenant is Waſte. Co. *ubi ſuprá*. Herne *ubi ſuprá*.

If the Tenant cut down Tim- 22 H. 6. 12. a. F. N. B. 59. m. C. *ubi ſuprá*.

Timber-Trees as is afore ſaid, or ſuch as are accounted Timber, it is Waſte; and if he ſuffer the young germens to be deſtroyed, this is Deſtruction, and puniſhable in Waſte alſo.

20 E. 3. Waſt 32. 10 H. 7. 2. 42 E. 3. 6. b. 5 E. 4. 100. 41 E. 3. Waſt 82. 12 E. 4. 1. & Co. 1 part Inſt. f. 53. a.

If the Tenant cut down Under-wood, (as he may by Law) yet if he ſuffer the young germens to be deſtroyed, or ſtub up the ſame by the Roots, ſo that it can grow no more, this is Waſte.

40 E. 3. f. 15. b. 4 E. 6. Waſte, Br. 136. Kitchin f. 243. a. Co. *ubi ſupra*. Comp. Att. p. 165. Herne's Law of Conv. p. 52.

Cutting down of Willows, Beech, Birch, Aſpe, Maple or the like, ſtanding and growing in the Defence and within the view of the Houſe, is Waſte.

Temps H. 8. Er. Waſte 184.

Beech of the age of 20 years, nor under 20 years, may not be cut by Tenant for Life or Years, for it is Waſte, unleſs it be in ſome Countries where there is plenty of Timber.

A.

A man cannot aſſign Waſte in the cutting of Beeches of the age of 7 or 8 years. 13 H.7.f.21.

Cutting of Haſels which grow not under the great Trees, but in a quarter of the Wood by themſelves, is Waſte. 40 E.3 f.25.b. 10 H.7.f.2. F.N.B. 60.e. Kitchin, f. 243.a.

If there be a Quick-ſet-Fence of White-thorn, and the Tenant ſtubs it up, or ſuffers it to be deſtroyed, it is Waſte. Co.1 part Inſtit.f. 53.a.46 E.3.f.17. 9 H.6.f.10.12 H. 8.1.Kitchin,f.244. a.

The Cutting of dead Wood which is dry and hollow, and neither bears Fruit nor Leaves in Summer, is no Waſte. Co. *ubi ſuprà*, & Kitchin *ubi ſuprà*. F.N.B.59. m. 16 El.Dyer 332.

The Tenant may take ſufficient Wood to repair the Walls, Pales, Fences, Hedges and Ditches, as he found them; but he can make no new ones but it will be Waſte. Co. 1 part Inſt.f. 53.b.

He may alſo take ſufficient Plough-bote, Houſe-bote, and Fire-bote, as is ſhewed before in Chap.5. p.91.

If

Co. 1 par. Inſt. f. 53. b. Compl. Att. p. 167. Herne's Law of Conv. p. 58.

If the Tenant cut down Trees for Reparations and ſell them, and after buieth them again and imploies them about neceſſary Reparations, yet it is Waſte by the Vendition, for he cannot ſell Trees, and with the mony cover the Houſe.

Co. ibid. & Herne *ubi ſuprá.*

Burning of the Houſe by negligence or miſchance is Waſte.

4 E. 6. Bro. Waſte 136.

A Termor may take Beech, Aſhes, and the like, which are well ſeaſonable, and have been uſed to be felled every 20, 16, 14, or 12 years, and it is no Waſte, for it is called *Sylva cædua.*

7 H. 6. f. 40. Kitchin, f. 243. b.

Cutting of Beeches and ſelling them is Waſte; but the Termor may cut them to repair upon the ſame Land, but not to make Reparations upon other Lands.

11 H. 6 f. 1. Sed vide 4 E. 6. f. 136. Kitchin, f. 243. a.

Cutting Beeches of 10 years old ſeaſonable for Houſe-bote, is no Waſte; but where they

are

are of the age of 20 years, and fit for main Timber, that is Waſte.

Where Oaks are cut, and the young germens ſuffered to be eaten with Cattel, ſo that they will be but Shrubs, this is Waſte. Kitchin, f. 243. b. 11 H. 6. f. 1. Com. Att. p. 167.

One may aſſign Waſte in the cutting of 20 Oaks, and alſo in their Stocks, to wit in not ſpringing them again; for if they were ſaved, they would be Timber, and for that they are not ſaved, it is Waſte. 22 H. 6. f. 14. Kitchin, f. 243. b.

A Termor may cut ſeaſonable wood, which is wont to be cut every 20 years, or within ſuch time. F. N. B. fo. 59. m.

Cutting of White-thorn is Waſte, but not the cutting of Black-thorn. 46 E. 3. f. 17. Kitchin, f. 244. a.

Where there is a Wood in which groweth nothing but Under-wood, the Termor cannot cut all; *contrà* of Under-wood 4 E. 6. Bro. Waſt 136.

wood where Aſh, Beech, and other principal Trees grow amongſt them, for there he may cut all the Under-wood.

7 H.6. f.40. Kitchin, f.244.a. Where Apple-trees are blown down, and after become dead, the Tenant may cut them for Fewel.

Kitchin, ibid. 44 E.3.f.44. Compl. Att.p.168. Cutting of Apple-trees, though they ly all along on the ground, yet if they bear fruit, it is Waſte.

10 H.7.f.2. Cutting of Damſin-trees is Waſte.

7H.6.38.44 E.3. 44.Co.1 part Inſt. f. 53.a. If the Tenant cut down any of the Fruit-trees growing in the Garden or Orchard, it is Waſte.

Co.1 part Inſt. f. 53.a. Vide Herne's Law of Conv. p. 52. But if ſuch Trees grow in any place of the ground out of the Garden or Orchard, it is no Waſte if he cut them.

Co.ibid.f.b. F.N. B. 59.n. Herne's Law of Conv.p. 53. Digging for Gravel, Lime, Clay, Brick-earth, Stones, or the like, is Waſte.

And ſo it is if the Tenant dig for

for Mines of Metall, Coals, &c. in the Earth, and not open at the time of the Leaſe made. Idem ibid. 41 E. 3. Waſt 8. Hobart's Rep. f. 234. Herne *ubi ſuprà.*

But he may dig for Gravel or Clay for Reparations of the Houſe, and it is no Waſte. Co. *ubi ſuprà.* Com. Att. p. 168. Herne *ubi ſuprà.*

It is Waſte to ſuffer a Wall of the Sea to be in decay, ſo as by the flowing and reflowing of the Sea the Meadow or Marſh is ſurrounded, whereby the ſame becomes unprofitable; but if it be ſuddenly by the rage and violence of the Sea occaſioned by ſome Tempeſt or the like, without any default of the Tenant, this is no Waſte puniſhable. Idem ibid. & Brit. f. 168. b. 6 El. in Griffins' caſe. 6 El. *ubi ſuprà.* F. N. B. 59. n.

If the Tenant repair not the Banks or Walls of Rivers or other Waters, whereby his Ground is ſurrounded, and becomes ruſhy and unprofitable, this is Waſte. Co. *ubi ſuprà.* 29 H. 8. Dyer 33. 22 H. 6. 4. 10 H. 7. 5. a. Kitchin, f. 241. b

To ſuffer Paſture-ground to be ſurrounded with water, ſo that Kitchin ibid. 20 H. 6. f. 1.

that it becomes rushy and nothing worth, or Arable-Land to be surrounded, so that nothing remains but tough Clay, this is Waste.

Co 1 part Inst. f. 53. b. 29 H. 8. Dyer 37. Hobart. Rep. f. 234. Vide Kitchin, f. 241. b. 10 H. 7. 5. a. 44 E. 3. 44. & Com. Att. p. 168.

If the Tenant convert Arable-Land into Wood, or *è converso*, or Meadow into Arable, it is Waste; for it doth not onely change the course of his Husbandry, but the proof of his Evidence.

2 H. 6. f. 11. F. N. B. 59. n.

To suffer Arable-Land to lie fresh, so that it is full of Thorns, is no Waste.

Co. 1 par. Inst. f. 54. b. 17 E. 3. 7. 9 H. 6. 66. F. N. B. 149. c. & 59. n. Vide Hil. 15 Jac. in the Lord Darcy & Askwith's case. Hobart's Rep. f. 234. Herne's Law of Conv. p. 54, & 55.

If a man lease his Lands in which are Mines of Coals or the like, without mentioning the Mines in the Lease, the Lessee for such Mines as are open at the time of the Lease made may dig lawfully, and take the profits thereof; but he may not dig for any new ones, it is Waste.

Co. *ubi supra.*

If there be open Mines, and the

the Owner make a Leaſe of the Land with the Mines therein, this ſhall extend to the open Mines onely, and not to any hidden Mines: but if there be no open Mines, and the Leaſe is made of the Land together with all Mines therein, in this caſe the Tenant may dig for them, and enjoy the benefit thereof, otherwiſe the words ſhould be void.

Vide Saunders's caſe, 41 El. in Co. 8. Co. 5. l. f. 12. Herne's Law of Conv. p. 54, & 55.

If a Leaſe be made to one of Lands, to occupy the ſame after the beſt way he can, or to make his beſt profit of them, yet this ſhall be intended onely to be after ſuch manner as is according to Right and Law; for in this caſe the Leſſee may not plow up Meadow, or pull down Houſes, &c. for if he do, he ſhall be puniſhed in Waſte.

17 E. 3. Tit. 101. Kitchin, f. 248. a.

If the Leſſee make the Villanes or Tenants at Will poor,

Co. 1 part Inſt. f. 53. b.

where

where they were rich when he came in, whereby they depart from their Farms, this is Exile and punishable.

CHAP. XII.

Who are punishable in Waste, and for what Waste, &c.

Co. 1 part Inst. f. 52. b. *Waste* in *Latine* is called *Vastum*, *à Vastando*, from wasting and depopulating.

Idem, f. 53. a. There are two kinds of Waste; that is to say, Voluntary or Actual Waste, and Permissive Waste.

Noye's Max. p. 33. Co. 1 part Inst. f. 53. a. & 2 part Inst. f. 302. Pl. Com. f. 467. b. 68. a. Philipps Pr. of Law, p. 32. Vid. *Mag. Charta*, ch. 4. & Stat. Glouc. An Action of Waste lieth against Tenant by the Courtesie, Tenant for Life, for Years, or half a year, Tenant in Dower, or Guardian in Chivalry, by him

him that hath the Eſtate immediate of Inheritance, for Waſte or Deſtruction in Houſes, Gardens, VVoods, Trees, Lands, Meadows, &c. or in Exile of men, to the diſheriſon of him in the Reverſion or Remainder, and they ſhall loſe the place waſted, and treble Dammages. ch. 5. Raſtal Waſt 1. 4. 5. & Wingate's Abr. Stat. p. 551, & 552. 4 H. 6. f. 11. Kitchin, f. 338. a.

It doth not lie againſt Guardian in Soccage, but an Action of Account or Treſpaſs. Co. 1 part Inſt. f. 54. a. Ferrer's *Mag. Charta*, f. 26. b.

Waſte lieth not againſt Tenant by *Elegit*, Statute-Merchant or the Staple, but an Action of Account after the Debt and Dammages levied. Noye's Max. p. 33. F. N. B. 59. e. 16 E. 3. Tit. Waſt 100. 2 E. 2. Waſt 1.

Neither doth it lie againſt Tenant at Will; but if ſuch Tenant voluntarily pull down the Houſes or cut down Timber-trees, &c. in this caſe the Lord may have an Action of Treſpaſs againſt him, *Quare vi & armis*, &c. but for permiſſive Co. 1 par. Inſt. f. 57. a. 21 H. 6. 38. 48 E. 3. f. 25. 11 H. 6. f. 38. 12 E. 4. f. 8. 22 E. 4. 5. 21 H. 6. f. 43. Kitchin, f. 237. a. b. Wallgrave & Somerſet's ca. Mich. 29 & 30 El. Goldsb. Rep. p. 72. pl. 17.

ſive Waſte the Lord hath no Remedie againſt him.

Noye's Max. *ubi ſupra.* Either Waſte or Account will lie againſt Tenant in Mortgage, for he hath Fee Conditional.

Co. 1 part Inſt. f. 54. a. There are 5 ſeveral Writs of Waſte; 2 at the Common Law, for Waſte done by Tenant in Dower or the Guardian; and 3 by the Statute-Law, for Waſte done by Tenant for Life, for Years, and Tenant by the Courteſie.

Co. 1 part Inſt. f. 200. b. Reg. 163. f. N. B. 127. & 1 part Inſt. f. 54. b. If two or more Joint-tenants or Tenants in common be of a Houſe of Habitation, and the one of them will not repair the Houſe, the other in that caſe may have a Writ *De reparatione facienda.*

12 H. 8. f. 1. Co. 1 par. Inſt. f. 54. b. Vid. Herne's Law of Conv. p. 54. If the Leſſor covenant to repair the Houſe, and doth not, in this caſe the Leſſee may cut Timber growing upon the ground and repair it, though he

he be not compellable thereunto, and ſhall not be puniſhed in Waſte for cutting the Wood.

If a man make a Leaſe of an Houſe and Lands, without impeachment of Waſte for the Houſe, yet may the Leſſee notwithſtanding repair the Houſe with the Timber growing upon the ground, though he may utterly waſte the Houſe if he will. Co. *ubi ſuprà.*

No perſon ſhall have an Action of Waſte, unleſs he hath the immediate ſtate of Inheritance; but ſometime another ſhall joyn with him for Conformity; as if a Reverſion be granted to two and the Heirs of the one, they two ſhall joyn in an Action of Waſte. Co. 1 part Inſt. f. 53. b. F. N. B. 59. f. 8 R. 2. Waſt 47. 27 H. 8. 13.

And in like ſort the ſurviving Coparcener and the Tenant by the Courteſie ſhall joyn in an Action of Waſte. Idem ibid.

If the Eſtate-Tail determine, Co. *ubi ſuprà.* 2 H. 4. 22.

mine, hanging the Action of Waſte, and the Plaintiff become Tenant in Tail after poſſibility of Iſſue extinct, the Action of Waſte is gone.

2 H.4. Co. *ubi ſupra*. Noye's Max. p.33.

If the Tenant do Waſte, and he in the Reverſion dieth, the Heir ſhall not have an Action of Waſte for the Waſte done in the life of the Anceſtor.

Co. *ubi ſupra*.

Nor a Biſhop, Maſter of an Hoſpital, Parſon, &c. in the time of the Predeceſſor.

Idem ibidem. 10 E.4.1.49 E.3.25. 11 E.2.Wa. 115. 2 Mar.117. 8 E. 2.Waſte 110.

If Leſſee for Years commit Waſte and die, no Action of Waſte lieth againſt his Executors or Adminiſtrators for Waſte done before their time.

Idem ibid.

If two Coparceners be of a Reverſion, and the one of them dies, the Aunt and Niece ſhall join in an Action of Waſte.

C.1 par. Inſt f.53. b.& 200.b.24E.3. 27.50E.3.3.8 H. 6.13.Co.2 part Inſt.onStat.Glou. ch.5.

If Lands be given two, and the heirs of one of them, he that hath the Fee ſhall not have an Action of Waſte upon the Sta-

Statute of *Glouc.* for that they are Joynt-tenants; but his Heir ſhall have an Action of Waſte againſt Tenant for Life.

If Leſſee for Life commit Waſte, and after ſurrender his Eſtate, and the Leſſor accepts it; now the Leſſee is diſcharged of the Waſte. F.N.B. 36. b. 14 H. 8. f. 11. Kitchin, f. 244. a. b.

If a Stranger make Waſte upon the Lands which one holdeth for Life or Years, the Termor ſhall be puniſhed for it, and is left to take his Remedy over. Kitchin, ibid. 5 H. 4. f. 3. 3 H. 6. f. 17. b.

But if the Leſſor himſelf make Waſte, the Tenant ſhall not ſuffer for that Waſte. Kitchin, *ubi ſupra.* 5 H. 4. f. 3.

If the Tenant make Waſte before his Attornment, he ſhall not be liable to an Action for it. Idem ibid. 48 E. 3. f. 15. 34 H. 6. f. 7.

If the Leſſor covenant to deliver Timber out of the ſame Land to repair the Houſe let, 44 E. 3. f. 21. Kitchin, *ubi ſupra.*

and will not, and for lack thereof the Leſſee will not repair it, but ſuffers the Houſe to fall; in this caſe he is puniſhable for ſuch Waſte: But if the Timber be to be taken out of other Lands, and is not delivered, then the Tenant is excuſable if he ſuffer the Houſe to fall, and no Action of Waſte lies againſt him.

Idem ibid.

Co. 1 par. Inſt. f. 53. b. *Note*, After the Waſte done, there is a ſpecial regard to be had to the continuance of the Reverſion in the ſame eſtate that it was at the time of the Waſte done; for if after the Waſte he grant it over, though he take back the whole Eſtate again, yet is the Waſte diſpuniſhable: and ſo it is if he grant the Reverſion to the uſe of himſelf and his Wife, and of his Heirs, yet the Waſte is diſpuniſhable, and ſo of the like; becauſe the Eſtate of the

the Reverſion continues not, but is altered, and conſequently the Action of Waſte for Waſte done before (which conſiſteth in privity) is gone.

A Prohibition of Waſte did lie againſt Tenant by the Courteſie, Tenant in Dower, and Guardian in Chivalry by the Common Law, but not againſt Tenant for Life or Years, becauſe they came in by the Leſſor's own Act, and he might have provided that no Waſte ſhould be done. Bract. l. 4. f. 315, 316. Brit. f. 168. Dr. & Stud. l. 2. ch. 1. 12 H. 4. 3. 10 H. 3. Waſt 142. 4 H. 3. Waſt 140. Co. *ubi ſupra.*

Tenant by the Courteſie or in Dower can hold of none but the Heir and his Heir by deſcent; and therefore if they grant over their Eſtate, and the Grantee doth Waſte, yet the Action muſt be brought againſt themſelves for the Waſte done, and not againſt the Aſſigns or Grantees. Noye's Max. p. 33. Co. *ubi ſupra.* F. N. B. 56. e. f. and ſee Co. 3. l. in Walker's ca. & 9. l. in Beaumont's ca. Regeſt. 72.

But if the Heir either be- Co. *ubi ſupra.*

fore the Assignment had granted, or after the Assignment doth grant the Reversion over; in both these cases the Grantee must bring the Action of Waste against the Assignee, for now the privity is destroyed.

Co. 1 par. Inst. f. 54. a. 27 E. 4. 81. 26 E. 5. Waste 10.

In all other Cases the Action of Waste must be brought against the parties that commit the Waste, (for it is in nature of a Trespass) unless it be in case of a Ward; for there if the Guardian doth Waste and assign over, the Action lieth against the Assignee.

Co. *ubi supra.* 12 H. 4. 3. 3 E. 3. Waste 146. Fleta, l. 1. ch. 11.

A Guardian shall not be punished for Waste done by a Stranger.

Idem ibid. F. N. B. 59. a. & 60. g. & t.

But Tenant by the Courtesie, in Dower, for Life, Years, &c. shall be punished for VVaste done by a Stranger, and are left to take their Remedy over against the Stranger as aforesaid.

If

If VVaſte be made by ſtrange Enemies or ſudden Tempeſt, the Termor is diſpuniſhable for ſuch VVaſte. See before ch. 11. p. 127. F. N. B. 59. I. Kitchin, f. 244. b.

If Land be let to a Feme ſole, and ſhe take Husband, who commits VVaſte and dies; ſhe ſhall be puniſhed for this VVaſte. F. N. B. 36. b. 3 E. 3. Tit. 20. Kitchin *ubi ſupra.* Co. *ubi ſupra.*

But if the Leaſe were made to the Husband and Wife, and he commits VVaſte and dies; in this caſe ſhe ſhall not be puniſhed for ſuch VVaſte, unleſs ſhe agree to the Eſtate. Kitchin, ibid. Finch, l. 1. ch. 3. p. 26.

If there be two Joynt-tenants of a VVard, and one of them commit VVaſte, both ſhall anſwer for it. Co. 1 part Inſt. f. 54. a. 33 E. 3. Waſt 6.

An Infant and Baron and Feme ſhall be puniſhed for VVaſte done by a Stranger. Co. ibid. Vide 15 H. 3. Waſte 16.

If a Feme Tenant for Life Co. ibid. Vide Clifton's caſe, 35 El. Co. 5. l. f. 73. 49 E. 3. 25. 46 E. 3. Waſte Statham. 10 H. 6. 11, 12.

take Husband, and the Husband doth VVaſte, and the VVife dieth; in this caſe he is not puniſhable for ſuch VVaſte: but if a Feme be poſſeſſed of a Term of years, and take Husband who commits VVaſte, and the VVife dies; here he ſhall be liable to an Action of VVaſte for the VVaſte by him committed, becauſe the Law giveth the Term to him.

Co. *ubi ſupra.* 30 E. 3. 16. If Tenant for Life grant over his Eſtate upon Condition, and the Grantee doth VVaſte, and the Grantor re-entereth for the Condition broken; the Action of VVaſte ſhall be brought againſt the Grantee, and the place waſted recovered.

Co. *ibid.* 48 E. 3. 19. If a Leaſe be made to a Vilain, and VVaſte is done, and the Lord entereth; in this caſe the Lord ſhall not be puniſhed for VVaſte done before Entry, but for VVaſte after he ſhall.

An

An Occupant ſhall be puniſhed for Waſte; and ſo if an Eſtate be made to *A* and his Heirs during the Life of *B*, and *A* dies, his Heir ſhall be puniſhed in Waſte. Co. ibid. & vide Co. 6. l. f. 37. Le Dean and Chap. de Worc. caſe; & l. 10. f. 9. b. Herne's Law of Conv. p. 53.

If a Leaſe be made to *A* for Life, the Remainder to *B* for Life, the Remainder to *C* in Fee; in this caſe if *A* make Waſte, no Action lieth againſt him during the Life of *B*; but if *B* die, then an Action of VVaſte lies againſt *A* for the VVaſte done in the Life of *B*; becauſe it was *ad exhæreditationem* of him in Remainder in Fee, and now the impediment (which was the mean Eſtate for Life) is taken away. Co. 1 part Inſt. f. 54. a. 50 E. 3. 3. 4 E. 3. 18 Perkins, 619. F. N. B. 58. c. & 59. h. 33 E. 3. Waſt 144. 11 E. 3. Receit 118. 10 E. 4. 9 Regeſt. 74. Paget & Carie's caſe vouched in Co. 2. lib. in Bingham's ca. f. 92. & Co. 5. l. f. 76. Page's caſe there, 35 El. in C. B.

And where it is ſaid in ſome Books, that he in Remainder or Reverſion in Fee ſhall not have an Action of VVaſte, it Vide Paget's ca. *ubi ſupra*, in Co. 5. l. Herne's Law of Conv. p. 53.

is to be intended during the continuance of the mean Remainder for Life: again, where it is ſaid in ſome other Books, that an Action of Waſte doth lie, it is meant after the death of him in Remainder for Life, & not otherwiſe, therefore *nota*.

Finch, l. 1. ch. 3. p. 20. Co. 1 part Inſt. f. 54. a. Vide Herne's Law of Conv. p. 50, & 53.

If a Leaſe for Life be made, the Remainder for Years, the Remainder in Fee; here an Action of VVaſte lies preſently againſt the Tenant for Life, during the term in Remainder, for this mean term for years is no impediment.

Co. *ubi ſuprà*; & Vide 4 E. 3. 18.

But if a man maketh a Leaſe for Life or Years, and after granteth the Reverſion for Years, the Leſſor ſhall have no Action of Waſte during the years; for he himſelf hath granted away the Reverſion in reſpect whereof he is to maintain his Action: but it is otherwiſe if he had made a Leaſe in Re-

Reversion, which had been but a future Interest, for there an Action of VVaste lieth during the term, and the term shall be saved in that case.

If an Action of VVaste be brought, and pending the VVrit the term end, yet the VVrit shall not abate; for although the Plaintiff cannot recover the place wasted, yet he shall recover the treble Dammages. 11 H. 6. f. 8. F. N B. fo. 60. 14 H. 8. f. 12. Kitchin, f. 246. b.

And so where one that holds for term of another's Life makes VVaste, and afterwards *Cestui que vie* dies; here the Lessor shall recover Dammages, although he cannot recover the place wasted. Co. 1 part Inst. f. 285 a. 11 H. 6. 43. 9 E. 4. 50.

If Tenant for Life or Years or their Assignes make a Grant over, and yet take the profits; then an Action of VVaste lieth against him by him in Reversion or Remainder, by the Statute of 11 *H. 6. c. 5.* F. N. B. f. 60. Kitchin, *ubi suprà.* 36 El. in C. B. Boothe's case, Co. 5. l. f. 77.

Co. 1 part Inſt. f. 54. a. & 2 part Inſtit. fo. 304. 4 E. 6. Waſte 136. 18 H. 8. 1. 15 H. 7. 11. 8 E. 3. Waſte 112. 4 E. 2. 32. 15 E. 3. Waſte 108. See Temps E. 1. Waſt 122, and 134. Kitchin, f. 246. b. Regeſtum Practicale, p. 343. Herne's Law of Conveyances, p. 54.

If Waſte be done in one Corner of a Wood, that onely ſhall be recovered; but if it be *ſparſim*, that is here and there in the Wood, then the whole Wood ſhall be recovered, or as much wherein the Waſte *ſparſim* is done.

Co. 1 part Inſt. f. 54. a. 8 E. 2. Waſt 112.

And ſo in Houſes, ſo many Rooms ſhall be recovered wherein there is Waſte done; but if the Waſte be done *ſparſim*, through all, then all ſhall be recovered.

If a man make a Leaſe for Life, and by Deed grant that if any Waſte be done, that it ſhall be redreſſed by Neighbours, and not by Suit or Plea; yet notwithſtanding an Action of Waſte doth lie, for the place waſted cannot be recovered without Plea.

4 E 6. Waſt 136. per Bromley. & Paſch. 1650. in B. R. per Juſt. Jermyn. Vid. Regeſt pract. p. 343.

If a man make Waſte in

cut-

cutting Trees which grow in Hedg-rows which incloſe Paſture, nothing ſhall be recovered but *Locus vaſtatus*, that is the Circuit of the Roots, and not the whole Paſture: But if the Trees grew *ſparſim*, ſcatteringly about the Paſture, then the whole Paſture is forfeited if they be cut. Reg. pract. *ubi ſuprà.*

It is a good Plea in Bar to a Writ of Waſte, to ſay that the Houſe fell by ſudden Tempeſt, although the Termor did covenant to repair it; but it is no Plea in a Writ of Covenant. 43 E. 6. f. 6. Waſt Kitchin, f. 247. a.

It is a good Plea in Waſte to ſay, that at the time of the Leaſe made the Houſe was ruinous, and the Timber putrefied and rotten, ſo that it fell; for if any of the principal Timber were rotten, it is no Waſte, though he did covenant to repair it. See before, ch. 2. p. 14. Kitchin, *ubi ſuprà.* 49 E. 3. f. 7. Waſt.

It

8 H.6.f.27.Waſt. 8 H.5. f.8. Waſt, mes veies Co.1 part Inſt.f.285.a.

It is alſo a good Plea to ſay, that the Plaintiff hath entred upon the Land, before which Entry no Waſte was made; or that he Surrendred, and the Plaintiff did accept, before which time no Waſte was made.

19 H.6.f.66.Vide Co. 1 part Inſt. f. 283.a.& Kitchin, f.247.b.

It is no Plea to ſay, that at the day of the Writ purchaſed the Houſe was ſufficiently repaired; but he muſt ſay after the Waſte committed, and before the Writ purchaſed, it was ſufficiently repaired; and this is a good Plea.

19 H. 6. 66. 14 H.6.14.11 R. 2. Waſte 99. Co. 1 part Inſt.f.285.a.

If the Leſſee doth Waſte, and after ſurrenders, and the Leſſor agrees; yet notwithſtanding the Leſſor may have an Action of Waſte, and recover the treble Dammages.

Co. *ubi ſupra.* 2 H.4.22.6 E.2. Brief 807.

If an Action of Waſte be brought by Baron and Feme in Remainder in ſpecial Tail, and pending the Writ the Wife dieth

eth without Iſſue; now the Writ in this caſe ſhall abate, becauſe every kind of Action of Waſte muſt be *ad exhæreditationem.*

If there be two Joynt-tenants of a Wood, Turbary, Piſcary, or the like, and one of them doth Waſte againſt the will of the other; here the other may have an Action of Waſte againſt him, and he that did the Waſte hath election before Judgment either to take his part in certainty by the Sheriff and the Oath of 12 men, &c. or that he grant that from thenceforth he ſhall not doe Waſte, but according to his proportion, &c. and if he make choice of a certain place, then the place waſted ſhall be aſſigned to him. Co. 1 part Inſt. f. 200. b. Weſtm. 2 chap. 22. Vide Raſtall Waſte 6. Wingate's Abr. Stat. p. 552. Ferrer's *Mag. Charta*, fo. 71. b. Co. 2 part inſt. fo.

And this doth extend as well Co. 1 part Inſt. fo. 200. a. b. 47 E. 3. 22. b. 2 H. 5. 1. & 3.

to

to Tenants in common and Joynt-tenants for Life, as to an Estate of Inheritance: but if one Tenant in common or Joynt-tenant out of a Dove-house destroy the whole Flight of Doves, no Action of Waste doth lie in that case upon the Statute, but the other may have an Action of Trespass against him that destroyed them, *quare vi & armis Columbare le Pl^t. fregit, & 200 Columbas pret. 40^s interfecit*, &c.

Co. 1 part Inst. f. 220. a. Vide Co. Reports, l. 2. f. 23. l. 9. f. 9. l. 12. f. 83.

If a Lease be made to hold to one without any impeachment of Waste, then the Lessee may cut down Trees, and convert them to his own use; but if the words be, to hold without impeachment for any Action of Waste, then in this case if the Lessee cut down Trees, the Lessor shall have them, for the discharge extends

tends but to the Action.

If Leſſee for Life grant a Rent-charge, and after doth Waſte, and the Leſſor recover in an Action of Waſte, he ſhall hold the Land charged during the Life of the Tenant for Life; but if the Rent were granted after the Waſte done, the Leſſor ſhall then avoid the Grant made by the Leſſee for Life. Co. 1 part Inſt. f. 233. b. & 234. a.

A Parſon, Vicar, Arch-deacon, Prebend, &c. may have an Action of Waſte, and the Writ ſhall be ſaid *ad exhæditationem Eccleſiæ*, &c. *ipſius* B, or, *Præbendæ ipſius* A. Co. 1 part Inſt. f. 341. a. 10 H. 7. 5. F. N. B. 55. d. & 57. e.

If Tenant in Fee releaſe to his Tenant for Life all his Right, yet he ſhall have an Action of Waſte. Co. 1 part Inſt. f. 345. b. 42 E. 3. 23 F. N. B. 60. h. 41 E. 3. Waſt 82. 42 E. 3. 18.

And if Tenant in Tail make a Leaſe for his own Life, yet he ſhall have an Action of Waſte. Idem ibid.

But

Co. 1 part Inſt. f. 345.b.43 Aſſ. pl. 13.41 E. 3. Waſt 83.11 H.4.67.13 H.7.10. Plo. Com. 482.

But if Tenant for Life be, the Remainder to another in Tail, and he in the Remainder releaſe to the Tenant for Life all his Right and State in the Land; in this caſe he cannot afterwards have an Action of Waſte.

Co. 1 part Inſt. f. 356.a.46E.3.20. 8 H.6.13.30 H.6. 7.

If the Leſſor bring an Action of Waſte againſt his Leſſee, the Leſſee cannot plead generally *Riens en le Reverſion*, but he muſt ſhew how and by what means the Reverſion is deveſted out of him.

Co. *ubi ſuprd.*

But if the Grantee of a Reverſion bring an Action of Waſte, the Leſſee may plead generally, that he hath nothing in the Reverſion.

Co. 1 part Inſt. f. 356.

If a Biſhop make a Leaſe for Life or Years and dies, and the Leſſee, the See being void, doth Waſte; in this caſe the Succeſſor ſhall have an Action of Waſte.

And

And ſo if Leſſee for Life be diſſeiſed, and Waſte is done, and the Leſſee re-enters; here an Action of Waſte lieth againſt him. Co. *ubi ſupra.*

If Leſſor and Leſſee for Years, &c. join in the cutting down of 20 Oaks, &c. growing upon the Lands leaſed, the Leſſor ſhall not puniſh the Leſſee for the ſame. Mich. 18 H. 8. 5. Perkins, 202.

If the Leſſee before his term begin enter into the Lands let to him, and doe an Act which amounteth unto Waſte, the Leſſor ſhall not have an Action of Waſte for the ſame.

None ſhall have Judgment to recover in an Action of Waſte, where the Waſte comes but to 12[d] or ſuch a petty Summe; for *De minimis non curat Lex.* Finch, l. 1. ch. 3. p. 29.

If Waſte be done upon Lands let for term of Years or Life, by one againſt whom the Leſſee Co. 2 part Inſt. f. 303. Regeſt. Prac. p. 343.

Leſſee can have no Remedy in Law for committing the ſame Waſte; the Leſſee in ſuch caſe is not puniſhable for the ſame by the Leſſor, except there be a ſpecial Covenant in the Leaſe, that he ſhall not commit nor ſuffer Waſte to be done.

Note well, what hath been here ſaid concerning Guardians in Chivalry and their Wards, is but onely to ſhew what the Law was formerly in thoſe caſes: for now by the Stat. of 12 *Car.* 2. chap. 24. Wardſhip (that former undoing of many Gentlemen) Primer-Seiſins, and all *Ouſter le mains*, &c. are quite taken away, and all hold now in free and common Soccage; and every Father, whether he be at age of 21 years or under, may by Deed executed in his life-time, or by his laſt Will and Teſtament in wri-

writing, in the preſence of two or more credible Witneſſes delivered, diſpoſe of his Children under the age of 21 years, and not married at the time of his Death, for and during ſuch time as they ſhall remain under the age of 21 years, or any leſſer time, to the Cuſtody and Tuition of any perſon or perſons in Poſſeſſion or Remainder, (Popiſh Recuſants excepted:) and ſuch Diſpoſition of ſuch Child or Children ſince the 24 *Febr.* 1645, or hereafter to be made, ſhall be good againſt all and every perſon and perſons claiming ſuch Child or Children, as Guardian in Soccage, or otherwiſe, &c.

CHAP.

CHAP. XIII.

An Abridgment of the Statute of the 43 Elizab. *and the* 15 *of* Car. 2. *about the unlawful cutting, ſtealing or ſpoiling of Wood,* &c. *neceſſary for all Gentlemen to know.*

IF any ſhall be convicted by his own Confeſſion, or by the Teſtimony of one Witneſs upon Oath, before one Juſtice of Peace, or Head-Officer, to have unlawfully cut or taken away any Grain growing, robbed any Orchard or Garden, digged up or taken away any Fruit-Trees, broken any Hedges, Pales, or other Fences, cut or ſpoiled any Woods or Under-woods, ſtanding and growing, or the like,

like, or to have been acceſſary thereunto, he ſhall, within ſuch time as the Juſtice or Head-Officer ſhall appoint, pay for the firſt Offence to the party grieved ſo much as the Juſtice or Head-Officer ſhall ſet down: and in caſe the party offending be not able to pay it, or do it not according to Order, then the Offender is by them or either of them (reſpectively) to be committed to the Conſtable, or other Officer of the Place where the Offence was committed, or the party apprehended to be whipped; and ſo for every Offence afterwards, and proved as aforeſaid, the Offender is to have the like puniſhment of Whipping.

If the Conſtable refuſe or neglect to whip the Offender, any ſuch Juſtice of Peace or Head-Officer may commit him

to

to Prison without Bail, till he whip or cause to be whipped the party offending, as is above declared.

No Justice may execute this Statute for Offences done to himself, unless he be associated with one or more Justices of Peace whom the Offence doth not concern. *Stat. 43. El. ch. 7.*

Now the *Statute* of the 15. *Car.* 2. is an Additional Act to this, as follows.

That every Constable, Headborough, or other person in every County, City, Town Corporate, or other place where they shall be Officers or Inhabitants, shall have power to apprehend or cause to be apprehended such as they suspect for having, or carrying, or any waies conveying any Burthen or Bundles of any kinde

kinde of Wood, Under-wood, Poles, or young Trees, Bark or Baſt of Trees, or any Gates, Styles, Poſts, Pales, Rails, or Hedg-wood, Broom, or Furze.

If any perſon be ſuſpected to have any ſuch Woods, Under-woods, &c. any Officer, by Warrant under the hand and Seal of one Juſtice, may enter by virtue thereof into the Houſes, Out-houſes, Yards, Gardens, or other places belonging to ſuch perſons, and whereſoever they finde any ſuch, they may apprehend thoſe perſons, and alſo thoſe who are ſuſpected to have cut and taken the ſame, and carry them before a Juſtice of the Peace of the County, City, &c. and if he in whoſe cuſtody ſuch Wood, &c. is found, cannot give a good Account, which may be ſatisfa-

tisfactory to the Juſtice, how he came by the ſame with the conſent of the Owner, or do not within a convenient time, ſet down by the Juſtice, produce the party of whom he bought the ſame Wood, Under-wood, &c. or ſome other credible Witneſs to depoſe upon Oath ſuch Sale of the ſaid Wood, Under-wood, &c. (which the Juſtice may adminiſter:) that then the ſaid perſon ſhall be deemed convict of the ſaid offence of cutting and ſpoiling of the ſame Woods, Under-woods, &c. within the meaning of the before-recited Statute of the 43. of *Eliz.* and be liable to the puniſhment therein contained; and to pay over and above down preſently, to the uſe of the Overſeers of the Poor of the place where the Offence is committed, for the Firſt Offence,

fence, ſuch a ſumme, not exceeding 10ˢ, as the Juſtice ſhall appoint. And if the Offender ſhall not perform the Juſtice's Order herein to the Owner, and alſo to the Overſeers of the Poor, then the Juſtice is to commit him to the Houſe of Correction, for ſo long (not exceeding one Moneth) as he ſhall think meet, or to be whipt by the Conſtable or other Officer, as the Juſtice ſhall judge moſt expedient. And if ſuch perſon ſhall again offend in the like kinde, and be convicted as before, then he muſt be ſent to the Houſe of Correction for one Moneth, and be there held to hard Labour. And if he do offend the third time, and be convicted as before, then he ſhall be taken, adjudged, and deemed as an Incorrigible Rogue.

If any buy any Burthens of

Wood, &c. (as before named) which may be justly suspected to have been stoln or unlawfully come by; any Justice, Mayor, Bailiff, or Head-Officer within his Jurisdiction, may, upon complaint to him made, examine the matter upon Oath, which they may administer: and if he find that the same was bought of one that may be justly suspected to have stoln or unlawfully come by the same, he may then order the party that bought the same, to pay Treble the value to the party from whom they were stoln or unlawfully come by, and in default of present payment thereof, issue out his Warrant to levy the same by Distress and Sale of the Offender's goods, rendring the overplus to the owner of such goods; and for lack of such distress, to commit the party to the Gaol, there to remain

without Bail for the ſpace of one Moneth at his own charges.

Note, that no man is to be puniſhed by this Law, that hath been puniſhed by a former Law for the ſame Offence: nor is any man to be queſtioned for any offence in this Statute, unleſs he be queſtioned for the ſame within ſix weeks after the Offence is committed.

FINIS.